

17.0
549940

BEATRICE COMPANY

Response No. 9



AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (herein referred to as "this Agreement") made this 24th day of August, 1978, by and among BEATRICE FOODS CO., a Delaware corporation (herein referred to as "Beatrice"), JOHN J. RILEY COMPANY, a Massachusetts corporation (herein referred to as the "Company") and JOHN J. RILEY, JR., DIANA W. RILEY, HELEN D. RILEY, JOHN J. RILEY, JR., Trustee for ANN C. RILEY, JOHN J. RILEY, JR., Trustee for JOHN J. RILEY, III, and DIANA W. RILEY, Trustee for PETER A. RILEY (herein referred to as the "Stockholders"). John J. Riley, Jr., in his individual capacity, is sometimes referred to herein as the "Indemnifying Stockholder".

W I T N E S S E T H:

WHEREAS, the Boards of Directors of Beatrice and the Company deem it advisable and in the best interests of Beatrice and the Company and their respective stockholders that the Company be acquired by Beatrice; and

WHEREAS, the Boards of Directors of Beatrice and the Company deem it advisable that the acquisition of the Company by Beatrice be effected through a merger (herein referred to as the "Merger") of the Company with and into Beatrice pursuant to an Agreement and Plan of Merger (herein referred to as the "Agreement of Merger") substantially in the form attached hereto as Exhibit A and made a part hereof; and

WHEREAS, Beatrice, the Company and the Stockholders intend that the Merger shall constitute a "reorganization" pursuant to Section 368(a)(1)(A) of the Internal Revenue Code of 1954, as amended (herein referred to as the "Code") and the rules and regulations of the Internal Revenue Service (herein referred to as the "Service") promulgated thereunder, and have adopted

this Agreement as a "plan of reorganization" within the meaning of Section 368 of the Code, and the rules and regulations promulgated thereunder; and

WHEREAS, the Stockholders own of record all the outstanding shares of the Company and desire to have the Company merge with and into Beatrice pursuant to the Agreement of Merger and have entered into this Agreement in consideration of Beatrice's execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual warranties, representations, covenants and agreements hereinafter set forth, Beatrice, the Company, and the Stockholders mutually covenant and agree as follows:

ARTICLE I

Agreement of Merger

1.1. As soon as practicable after the date of this Agreement, and in any event prior to the Closing Date (as defined in Section 3.3 of Article III hereof), Beatrice and the Company shall execute and deliver the Agreement of Merger and Articles of Merger which set forth the Agreement of Merger in full (herein referred to as the "Articles of Merger") for and on behalf of each of them in accordance with the applicable provisions of the Delaware General Corporation Law and the Business Corporation Law of Massachusetts.

1.2. If this Agreement terminates and no Closing is held hereunder as hereinafter provided the Agreement of Merger shall be deemed to have been terminated and abandoned pursuant to Section 4.02 of Article IV thereof.

ARTICLE II

Manner of Converting Capital Stock of the Company into Beatrice Common Stock

2.1. The manner in which shares of the Company's capital stock shall be changed and converted into shares of common stock, without par value, of Beatrice (herein referred to as "Beatrice Common Stock") is set forth in Section 3.01(b) of Article III of the Agreement of Merger.

2.2. In the event that after the date of this Agreement and prior to the Effective Date of the Merger (as defined in Section 3.5 of Article III hereof) Beatrice shall:

(i) declare any dividend payable in shares of Beatrice Common Stock to the holders of record thereof prior to the Effective Date of the Merger, then the Agreement of Merger shall be modified in order to increase the number of shares of Beatrice Common Stock which are issuable or deliverable pursuant thereto by that number of shares of Beatrice Common Stock which would have been payable on such shares had the Effective Date of the Merger occurred prior to the record date for such dividend payment;

(ii) issue any shares of Beatrice Common Stock in subdivision of the outstanding shares of Beatrice Common Stock, whether by reclassification or otherwise, then the Agreement of Merger shall be modified in order to provide for a proportionate increase in the number of shares of Beatrice Common Stock which are issuable or deliverable pursuant thereto; or

(iii) combine the outstanding shares of Beatrice Common Stock, whether by reclassification or otherwise, then the Agreement of Merger shall be modified in order to provide for a proportionate reduction in the number of shares of Beatrice Common Stock which are issuable or deliverable pursuant thereto.

ARTICLE III

The Closing

3.1. The closing (herein referred to as the "Closing") of the transactions contemplated by this Agreement shall take place at the offices of Nutter, McClennen & Fish, Federal Reserve Plaza, 600 Atlantic Avenue, Boston, Massachusetts, at 9:00 A.M., local time, or at such other place and time as Beatrice and the Company may mutually agree upon in writing for the Closing to take place.

3.2. Subject to the provisions of this Article III and Articles XI, XII and XIII hereof, the Closing Date (as hereinafter defined in Section 3.4 hereof) shall be November 15, 1978 or such other date as the parties may agree upon in writing, provided that the following events shall have occurred on or prior to November 15, 1978:

(a) the New York Stock Exchange, Inc. (herein referred to as the "NYSE") and the Midwest Stock Exchange, Incorporated (herein referred to as the "MSE") shall have authorized the listings, upon official notice of issuance, on the New York Stock Exchange and the Midwest Stock Exchange, respectively, of the shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger; and

(b) the Company shall have received written rulings from the Service in form and substance satisfactory to Nutter, McClennen & Fish, counsel to the Stockholders, to the effect that:

(i) the Merger of the Company with and into Beatrice in accordance with this Agreement will constitute a tax-free reorganization within the meaning of Section 368(a)(1)(A) of the Code; and

(ii) for federal income tax purposes no gain or loss will be recognized by the Stockholders by reason

of the exchange of their shares of capital stock of the Company solely for Beatrice Common Stock pursuant to this Agreement and Article III of the Agreement of Merger.

3.3. If the requirements referred to in Section 3.2(a) shall not have been satisfied and the requirement referred to in Section 3.2(b) shall not have been satisfied or waived by the Company on or prior to November 15, 1978, the Closing Date shall be postponed without further action by, or agreement of, Beatrice or the Company or the Stockholders to the fifth day (exclusive of Saturdays, Sundays and holidays) following the date said requirements are satisfied or so waived; provided that if the requirements referred to in Section 3.2(a) shall not have been satisfied and the requirement referred to in Section 3.2(b) shall not have been satisfied or waived by the Company on or prior to January 31, 1978, and on or prior to January 31, 1978 Beatrice and the Indemnifying Stockholder shall not have mutually agreed to extend the latest date for the satisfaction of such requirements then this Agreement shall terminate and upon such termination none of the parties hereto shall have any rights, liabilities, duties or obligations under this Agreement or the Agreement of Merger.

3.4. For purposes of this Agreement, the term "Closing Date" shall mean the date on which the Closing occurs.

3.5. At the Closing:

(a) Beatrice shall deliver to the Company and the Stockholders the opinions, certificates, and other documents, instruments and affidavits referred to in Article XII hereof and all other documents otherwise required by this Agreement to be delivered to the Company and the Stockholders by Beatrice at the Closing.

(b) The Company, the Indemnifying Stockholder and the Stockholders shall deliver to Beatrice the opinions,

certificates, and other documents, instruments and affidavits referred to in Article XI and all other documents otherwise required by this Agreement to be delivered to Beatrice by the Company, the Indemnifying Stockholder and the Stockholders at the Closing.

(c) Beatrice and the Indemnifying Stockholder shall execute and deliver the Escrow Agreement ("Escrow Agreement") substantially in the form attached hereto as Exhibit B and will use their best efforts to have the Escrow Agreement, as so executed, executed and delivered by the Continental Illinois National Bank and Trust Company of Chicago, as escrowee (the "Escrowee"), and the Indemnifying Stockholder shall, immediately upon his receipt of a certificate for 10,000 shares of Beatrice Common Stock, deposit with the Escrowee under the Escrow Agreement such certificate (duly endorsed in blank or with stock powers attached thereto duly endorsed in blank, in either case with signature guaranteed by a commercial bank or trust company having a correspondent in Chicago, Illinois or by a broker who is a member of the New York, American or Midwest Stock Exchange).

(d) Beatrice and the Company and the Stockholders shall take any and all other actions and do any and all other things necessary consistent with the terms of this Agreement to consummate the Merger and to enable the Merger to become effective on the Closing Date in accordance with the Agreement of Merger including the filing of the Articles of Merger, and the execution and filing of such other agreements and certificates as may be required under the Business Corporation Law of Massachusetts.

3.6. The Merger shall be deemed to become effective upon the latter to occur of the filing of the Agreement of Merger and the Articles of Merger in the State of Delaware and the Commonwealth of Massachusetts, respectively. For the purposes of this

Agreement, the term "Effective Date of the Merger" shall mean the date on which the Merger becomes effective.

ARTICLE IV

Covenants of the Company and the Indemnifying Stockholder

The Company and the Indemnifying Stockholder covenant and agree with Beatrice as follows:

4.1. The Company, and the Indemnifying Stockholder will furnish Beatrice with all documents, reports and other information and data (including financial statements) concerning the Company as Beatrice may, from time to time, reasonably require in connection with the listing applications required to be filed by Beatrice with the NYSE and the MSE covering the shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger, or any other statement, application, document or instrument required to be submitted to or filed with the NYSE or MSE or any other person, firm, corporation or governmental or other entity in connection with this Agreement and the transactions contemplated hereby.

4.2. The Company shall at all reasonable times prior to the Closing make its plants, inventories, personnel, books of account, tax returns, corporate record books, stock record books and all other files and records available for examination and inspection by Beatrice and its agents and representatives, and Beatrice shall have the right to audit the books and records of the Company prior to the Closing Date; provided, however, that no such examination, inspection or audit by Beatrice or its agents and representatives shall in any way diminish, terminate or otherwise affect any of the warranties, representations, covenants or agreements of the Company or the Indemnifying Stockholder contained in this Agreement, the Disclosure Statement or any other certificate, document, instrument or affidavit

furnished or to be furnished by the Company or the Indemnifying Stockholder in connection with this Agreement.

4.3. Pending the Closing, the Company and the Indemnifying Stockholder will use their best efforts to preserve the business organization of the Company intact, to keep available to Beatrice the services of its present employees and to preserve its goodwill and its relationships with suppliers, customers and others having business relationships with it. The Company and the Indemnifying Stockholder will promptly notify Beatrice in writing of any: (a) material adverse change which may hereafter occur with respect to the employees, suppliers, customers or others having business relationships with the Company and (b) changes in the insurance coverage of the Company which occur on or prior to the Closing Date.

4.4. The Company agrees to furnish Beatrice with copies of all federal, foreign, state and local tax returns and reports of the Company which are to be filed or submitted after the date hereof and prior to the Closing Date at least twenty (20) days prior to the filing or submission of any said return or report. The Company will not, nor will it permit any other person to, waive the provisions of any statute of limitations as such provisions may apply to the assessment of federal, foreign, state or local taxes payable by the Company for any taxable year or period (or portion thereof) ending on or prior to the Closing Date without the prior written approval of Beatrice, which approval shall not be unreasonably withheld. In the event the Service or any other federal, foreign, state or local governmental body or authority shall commence, on or prior to the Closing Date, examination of any tax returns of the Company for years or periods (or portions thereof) ending on or prior to the Closing Date, the Company shall give Beatrice prompt written notice of such commencement and Beatrice shall have the right to be

advised of and be present at any such examination and the Company will not settle or compromise any claim arising out of such examination without the prior written approval of Beatrice, which approval shall not be unreasonably withheld.

4.5. At least twenty days prior to the Closing Date, the Indemnifying Stockholder shall obtain and deliver to Beatrice:

(a) With respect to each parcel of real estate owned by the Company, an owner's preliminary report on title, covering a date subsequent to the date hereof, issued by Chicago Title Insurance Company or such other title insurance company as is acceptable to Beatrice which preliminary report shall contain a commitment of such title insurance company to issue an owner's title insurance policy on ALTA 1970 Owner's Form B together with the endorsements and provisions which are indicated in Section 11.9(a) hereof (i) insuring the Company as to the fee simple title of the Company in each such parcel, including all buildings, structures, fixtures and other improvements thereon, in the amount of \$1,000,000, and subject only to (A) such minor encumbrances or imperfections, if any, which are not substantial in nature or amount and which do not detract from the value of such parcel of real estate as presently used or impair the operations of the Company, (B) liens of current state and local property taxes, which are not delinquent or subject to penalty and (C) such other matters as may be set forth in the Disclosure Schedule (as defined in Section 6.1(b) of Article VI hereof) or approved in writing by Beatrice and (ii) insuring the Company against the lack of a right of access to and from such parcel of real estate via a public road or highway; and

(b) A survey as of a date subsequent to the date hereof, certified by Hayes Engineering, Inc., or such other registered surveyor as Beatrice may approve of in writing, and showing no changes in the plan referred to in Section 7.1(f) hereof, except as set forth in the Disclosure Schedule.

4.6. Except as disclosed in the Disclosure Schedule or approved in writing by Beatrice, pending the Closing:

(a) The Company shall conduct and carry on its business and affairs only in its ordinary and regular course;

(b) The Company shall not change, amend or otherwise modify its Articles of Organization or its By-laws;

(c) The Company shall not (i) sell, grant, issue or otherwise dispose of any shares of capital stock or other securities of the Company, (ii) acquire (through redemption or otherwise) any shares of capital stock or other securities of the Company, or (iii) sell, grant, issue or otherwise dispose of any options, warrants or other rights to acquire shares of capital stock or other securities of the Company;

(d) The Company shall not declare, set aside or pay any dividends or make any other distributions in respect of any shares of its capital stock except that the Company may declare and pay to the Stockholders such cash dividends as are equal to the amount of those cash dividends which would have been payable by Beatrice to the stockholders of the Company as stockholders of Beatrice had the Effective Date of the Merger occurred on or prior to the next Beatrice dividend record date after the date hereof, less the sum of \$13,500;

(e) The Company shall not sell or otherwise dispose of any of its properties or assets whatsoever except for the sale or other disposition of personal property in the ordinary course of its business;

(f) The Company shall not increase the rate or change the nature of the compensation payable by the Company to any director or officer or other executive of the Company or to any Stockholder;

(g) The Company shall not enter into or become obligated under any oral or written contract, agreement, arrangement, commitment, plan or understanding except for normal purchase and sales contracts and commitments entered into in the ordinary course of its business, nor shall the Company change, amend, terminate or otherwise modify any contract, agreement, arrangement, commitment, plan or understanding set forth in the Disclosure Schedule or approved in writing by Beatrice without the prior written approval of Beatrice;

(h) The Company shall not make any contributions to the Massachusetts Leather Pension Trust except for those made in accordance with the provisions of the Pension Plan Agreement entered into as of September 1, 1977 by and between the Company and Leather Worker's International Union, AFL-CIO, and Local 22 thereof;

(i) The Company shall not agree to take any of the actions specified in the preceding clauses (b) through (h) of this Section 4.6; and

(j) Neither the Company nor any Stockholder will voluntarily take any action or course of action inconsistent with the satisfaction of the conditions, terms and provisions of this Agreement or the consummation of the transactions contemplated hereby.

4.7. The Company and the Indemnifying Stockholder will use their best efforts to obtain the ruling referred to in Section 3.2(b) hereof on or prior to November 15, 1978 and will furnish Beatrice with a copy of all communications relating to such ruling and ruling request, will keep Beatrice fully advised as to the status of such ruling and ruling request and will upon receipt of such ruling, promptly give written notice of such receipt to Beatrice, together with a copy of such ruling.

ARTICLE V

Covenants of the Company and the Stockholders

The Company and the Stockholders hereby waive the provisions of Article XI of the by-laws of the Company and covenant and agree with Beatrice that such provisions shall have no application to the transactions contemplated herein.

ARTICLE VI

Covenants of Beatrice

Beatrice covenants and agrees with the Company and the Indemnifying Stockholder as follows:

6.1. (a) Pending the Closing and, if this Agreement is terminated, at all times after the date hereof, Beatrice shall not, nor shall Beatrice permit any person, firm, corporation or entity under its control to, use, submit or disclose to, or file with, others, any financial statements, reports, documents, instruments, information or data which Beatrice or its agents and representatives may obtain from the Company pursuant to the provisions of Section 4.2 hereof or otherwise in connection with the Merger, except (i) for the use thereof by Beatrice and by its agents and representatives in connection with their investigation, review and analysis of the Company in connection with the Merger, (ii) for financial statements, reports, documents, instruments, information and data which are of a public nature or are submitted or disclosed to, or filed with, the SEC, the NYSE, the MSE or other persons, firms, corporations or entities pursuant to this Agreement or otherwise in connection with the Merger, and (iii) as otherwise required by law.

(b) Except for financial statements, reports, documents, instruments and other written materials which are of a public nature or are submitted or disclosed to, or filed with, the SEC, the NYSE, the MSE or other persons, firms, corpo-

rations or entities pursuant to this Agreement or otherwise in connection with the Merger, and except as otherwise required by law, if this Agreement is terminated, Beatrice shall return to the Company any and all such financial statements, reports, documents, instruments and other written materials which Beatrice shall have obtained from the Company in connection with the Merger as the Company may reasonably request.

6.2. Beatrice shall use its best efforts to obtain the authorizations for listing of Beatrice Common Stock referred to in Section 3.2 of Article III hereof.

6.3. Subsequent to the Closing Date, Beatrice shall (a) not extend or waive any statute of limitations with respect to the federal income tax liability of the Company for any period ended on or prior to the Closing Date without the prior written approval of the Indemnifying Stockholder, which approval shall not be unreasonably withheld, (b) with the cooperation of the Indemnifying Stockholder use its best efforts to prepare and make timely filings of all federal and state income tax returns required in connection with the Company's short taxable year ending with the Closing Date; and (c) pay the taxes shown on said returns to be due, provided, however, that no such payment shall be deemed to constitute any qualification to, or exception from the warranties and representations of the Company and the Indemnifying Stockholder contained in Section 8.15(a), or any other Section of Article VIII of this Agreement.

6.4. Beatrice shall use its best efforts to the end that from and after the Closing Date, it will file with the Securities and Exchange Commission all reports required to be filed under Section 13 or 15(d) of the Securities Exchange Act of 1934.

6.5. Beatrice shall use its best efforts to make or obtain any and all filings, qualifications or permits necessary under the state securities laws of Massachusetts and New Hampshire

in connection with the issuance or delivery of the shares of Beatrice Common Stock provided to be issued or delivered by Beatrice under Article III of the Agreement of Merger.

ARTICLE VII

Deliveries of Financial Statements, Disclosure Schedule and Other Documents

7.1. The Company has heretofore delivered to Beatrice:

(a) The balance sheets of the Company at December 31, 1976, December 31, 1977 and April 30, 1978 and the related statements of earnings, retained earnings and application of earnings for the years ended December 31, 1976 and December 31, 1977 and for the four month period ended April 30, 1978, accompanied in the case of the financial statements for the years ended December 31, 1976 and December 31, 1977 by the reports dated February 18, 1977, and February 1, 1978, respectively, of the Company's independent certified public accountants, Myron Freedman, on such financial statements. The balance sheet of the Company at April 30, 1978, together with the notes thereto, is herein referred to as the "Balance Sheet" and the term "Balance Sheet Date" as used herein shall mean April 30, 1978. The foregoing financial statements (herein, together with the notes thereto, referred to as the "Financial Statements") have been signed for identification purposes by the President of the Company and the Indemnifying Stockholder.

(b) A letter (herein referred to as the "Disclosure Schedule") of even date herewith addressed to Beatrice from the Company and the Indemnifying Stockholder and executed on behalf of the Company by its President and Chief Financial Officer and executed by the Indemnifying Stockholder, accompanied or preceded by a copy of each contract, agreement, arrangement, commitment, plan or understanding or other document or instrument referred to therein.

(c) A copy of the Articles of Organization of the Company, certified by the State Secretary of the Commonwealth of Massachusetts.

(d) A copy of the By-laws of the Company, certified by the Clerk of the Company.

(e) A copy of the resolutions adopted by the Board of Directors of the Company and a copy of the separate resolutions adopted by the stockholders approving and adopting this Agreement, the Agreement of Merger and the Merger, authorizing the execution and delivery of this Agreement and the Agreement of Merger by the Company, authorizing the consummation of the transactions contemplated hereby and thereby and waiving the provisions of Article XI of the by-laws of the Company which relate to conditions upon the transfer of stock of the Company, certified by the Clerk of the Company.

(f) A plan entitled "Plan of Land Belonging to John J. Riley Company, in Woburn, Massachusetts, October 27, 1977, Prepared by Hayes Engineering, Inc., Melrose, Massachusetts."

7.2. Beatrice has heretofore delivered to the Company and the Stockholders:

(a) The 1978 Annual Report to Stockholders of Beatrice containing the consolidated balance sheet of Beatrice and its subsidiaries at February 28, 1978, and the related statements of consolidated earnings, consolidated capital surplus and earnings reinvested in the business, and consolidated changes in financial position of Beatrice and its subsidiaries for the year ended February 28, 1978 and the report dated April 26, 1978 of Beatrice's independent certified public accountants, Peat, Marwick, Mitchell & Co., on such consolidated financial statements (all such consolidated financial statements, including the notes thereto, being herein referred to as the "Beatrice Financial Statements"), together with a copy of Beatrice's An-

nual Report on Form 10-K for the fiscal year ended February 28, 1978;

(b) A copy of the Prospectus of Beatrice dated June 23, 1978, as supplemented, covering 25,000,000 shares of Beatrice Common Stock (herein referred to as the "Prospectus");

(c) A copy of the resolutions adopted by the Board of Directors of Beatrice authorizing the execution and delivery of this Agreement and the Agreement of Merger by Beatrice, and the consummation of the transactions contemplated hereby and thereby, certified by the Secretary of Beatrice; and

(d) Copies of Rules 144 and 145 under the Securities Act of 1933, as amended (the "Securities Act").

ARTICLE VIII

Warranties and Representations of the Company and the Indemnifying Stockholders

Except as set forth in the Disclosure Schedule, the Company and the Indemnifying Stockholder, jointly and severally, warrant and represent to Beatrice, its successors and assigns, as follows:

8.1. The Company is a corporation, duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and the Company has the corporate power and holds all rights, privileges, franchises, immunities, licenses, permits, authorizations and approvals (governmental or otherwise) necessary to entitle it to use its corporate name and to own and operate its properties and to carry on and conduct its business as presently carried on and conducted.

8.2. The Company is not licensed nor is it qualified to transact business as a foreign corporation in any jurisdiction and it neither owns any property nor transacts any business in any jurisdiction such as would require it to be licensed or qualified as a foreign corporation in such jurisdiction.

8.3. On the date hereof the Company does not own, nor on the Closing Date will it own, any capital stock or other securities or any other direct or indirect interest in, any person, firm, corporation, association, partnership, joint venture, trust or other entity. None of these investments is subject to any restriction, whether contractual or statutory, which impairs the ability of the holder to dispose thereof in the open market at any time.

8.4. (a) The total number of shares of capital stock which the Company is authorized to issue is 100,000 shares, par value \$.50 per share, and the number of such shares which on the date hereof are, and on the Closing Date will be, issued and outstanding is 21,400. Except for a total of 28,600 shares, the Company does not on the date hereof, nor on the Closing Date will the Company, own any treasury shares;

(b) On the date hereof there are not outstanding, nor on the Closing Date will there be outstanding, any (i) securities of the Company which are, or which may become, convertible into or exchangeable for any shares of capital stock or other securities of the Company or (ii) subscriptions, options, warrants or other rights which may entitle any person, firm, corporation or other entity to acquire from the Company any shares of its capital stock or other securities;

(c) The issued and outstanding shares of capital stock of the Company have been duly and validly issued, are fully paid and nonassessable, and have not been issued in violation of, and are not subject to, any preemptive rights; and there are no voting trust agreements or other contracts, agreements, arrangements, commitments, plans or understandings restricting voting or dividend rights with respect to the outstanding shares of capital stock of the Company; and

(d) The Company has not violated in any material respect any federal, foreign, state or local law, ordinance,

rule or regulation, in connection with the offer for sale or sale and issuance of its outstanding shares of capital stock or any other securities.

8.5. Neither the Stockholders, nor any person who would be an heir or descendent of any of the Stockholders if any Stockholder were not now living, nor any director or officer or other employee of the Company, (a) owns, or on the Closing Date will own, any securities of, or has, or on the Closing Date will have, any other direct or indirect interest in, any entity which does business with the Company, (b) has, or on the Closing Date will have, any direct or indirect interest in any right, property or asset which is utilized or required by the Company in the conduct of its business, or (c) has, or on the Closing Date will have, any contractual relationship with the Company. No director, officer or employee of the Company is a party to any contract, agreement, arrangement, commitment, plan or understanding or is a party to any pending action or proceeding which may interfere with the performance of such person's duties with the Company, or is threatened to be made a party to any such action or proceeding.

8.6. On the Balance Sheet Date the Company had, on the date hereof it has, and on the Closing Date it will have, good and marketable title to all the properties and assets reflected in the Balance Sheet (except as to personal property only, as the same may have been sold or otherwise disposed of after the Balance Sheet Date in the ordinary course of business and except as to real estate for the matters referred to in clauses (A), (B) and (C) of Section 4.5(a) of Article IV hereof) subject to no mortgages, pledges, liens, claims, charges, encumbrances or other adverse interests of any kind.

8.7. (a) The Disclosure Schedule sets forth all real estate in which the Company on the date hereof has, and on the

Closing Date will have, any right, title or interest and the nature of the right, title or interest of the Company therein. The Company enjoys peaceful possession of all such properties.

(b) On the date hereof all of the buildings, structures and improvements on the parcels of real estate owned by the Company are, and on the Closing Date all of such buildings, structures or improvements will be, located as shown on the plan referred to in Section 7.1(f). On the date hereof all such buildings, structures and improvements are, and on the Closing Date all such buildings, structures and improvements will be, located and constructed in compliance with all applicable zoning ordinances and building codes.

(c) None of the buildings, structures or improvements located on the parcels of real estate owned by the Company are the subject of any official complaint or notice of violation of any applicable zoning ordinance or building code, and there is no such violation; and there is no zoning ordinance, building code, use or occupancy restriction or condemnation action or proceeding pending of which the Company has received notice, or, to the knowledge of the Company or the Indemnifying Stockholder threatened, with respect to any such building, structure or improvement or any such parcel of real estate.

8.8. On the date hereof there is not, and on the Closing Date there will not be, any material right, property or asset utilized or necessary in the conduct of the business of the Company which is not either owned by the Company or licensed or leased to the Company and on the date hereof, all such properties and assets are, and on the Closing Date all such properties and assets will be, in good operating condition and repair, ordinary wear and tear excepted.

8.9. Since the Balance Sheet Date:

(a) The Company has not suffered any material adverse change in its financial condition, properties, assets, liabilities, rights, business or prospects or with respect to its employee, supplier, customer or other business relationships and neither the Company nor the Indemnifying Stockholder has any knowledge of any fact or contemplated event which may cause any such material adverse changes.

(b) The Company has conducted and carried on its business and affairs only in its ordinary course.

(c) There has been no change, amendment or other modification made in the Articles of Organization or By-laws of the Company.

(d) The Company has not declared, set aside or paid any dividends or made any other distributions in respect of any of the shares of its capital stock nor has it acquired (through redemption or otherwise) any shares of capital stock or other securities of the Company.

(e) The Company has not sold or otherwise disposed of any of its properties whatsoever except for the sale or other disposition of personal property in the ordinary course of its business.

(f) There has been no increase or any change made in the rate or nature of compensation payable by the Company to any director, officer or other executive of the Company or to any Stockholder employed by the Company.

8.10. There is no litigation at law or in equity, no arbitration proceeding, no proceeding and no investigation pertaining to the business or affairs of the Company before any commission, agency or other administrative or regulatory body or authority pending, or to the knowledge of the Company or the Indemnifying Stockholder threatened, against or affecting the properties, assets, rights, business or prospects of the Company

or the right of the Company to carry on and conduct its business as conducted on the Balance Sheet Date, and on the date hereof; and there is no basis for any such litigation, proceeding or investigation.

8.11. (a) The Company does not own any registrations of any federal, foreign or state letters patents or federal, foreign, state or local trademarks, trade names, brand names or copyrights or any applications pending or to be filed therefor and none are necessary for the conduct of the business of the Company. On the date hereof, the Company has, and on the Closing Date the Company will have, the right to utilize any and all inventions, processes, know-how, formulae and trade secrets utilized in its business and no other inventions, processes, know-how, formulae or trade secrets are necessary for the conduct of the business of the Company. All such inventions, processes, know-how, formulae and trade secrets, are valid and in full force and effect and free and clear of any and all licenses, royalties, liens, claims, charges, encumbrances and other adverse interests of every nature, are not currently being challenged in any way and are not involved in any pending or, to the knowledge of the Company or the Indemnifying Stockholder, threatened interference or opposition action or proceeding. The carrying on and conduct by the Company of its operations; the manufacture, use and sale by the Company of its products; the performance by the Company of its services; the use by the Company of its machinery, equipment and processes; the use by the customers of the Company of its products for the purposes for which sold; and the use by the Company of its inventions, processes, know-how, formulae, trade secrets, advertising, technical or other literature do not infringe upon or conflict with any other proprietary right nor has the Company or the Indemnifying Stockholder been informed of any claim of any such infringement or conflict. The rights

of the Company to its use and enjoyment of such inventions, processes, know-how, formulae, trade secrets, advertising, technical or other literature are not being infringed by any other rights or actions of others.

(b) No Stockholder, director, officer or, to the knowledge of the Company or any Stockholder, any other employee of the Company directly or indirectly owns or holds on the date hereof, or will own or hold on the Closing Date, in whole or in part, any invention, trade secret, patent, trademark, trade name, brand name or copyright, or application therefor or any other proprietary right (i) which the Company is presently using, (ii) the use of which is necessary for the business of the Company, or (iii) which pertains to the business or the arts in which the Company is engaged.

(c) The Company has taken all reasonable security measures taken by companies in similar lines of business to protect the secrecy, confidentiality and value of its trade secrets.

8.12. The Disclosure Schedule sets forth the total annual rate of compensation, including without limitation thereon, all salaries, bonuses, contributions made pursuant to any pension, profit sharing, retirement, bonus or deferred compensation plan of the Company, and any other payments or provisions for employee benefits, which has been or will be paid or will be payable by the Company to any Stockholder and each director, officer and other executive of the Company for the period between the Balance Sheet Date and the Closing Date and which will become payable for any subsequent period thereto. Neither the Company nor any Stockholder has any knowledge of any facts which would indicate that any Stockholder, director, officer or other executive of the Company will not continue their employment on the same basis as they are presently employed following the consummation of the Merger.

8.13. (a) On the date hereof the Company is not, nor on the Closing Date will the Company be, a party to, a beneficiary of, subject to, bound by, or obligated under any oral or written contract, agreement, arrangement, commitment plan, or understanding of any nature, including without limitation, any purchase or sale contract or commitment, any guaranty, any dealership, distributorship, franchise or similar agreement, any power of attorney, any patent, trademark or similar licensing agreement (either as licensor or licensee), any lease agreement (either as lessor or lessee), any indenture, deed of trust, mortgage, chattel mortgage or similar agreement, any conditional sales contract, any labor or collective bargaining contract, agreement, arrangement, plan or understanding, any deferred compensation contract, agreement or arrangement, any employment contract, agreement or arrangement or understanding, or any commitment, right or option to purchase or sell or otherwise dispose of any capital stock or other securities or any rights, properties or assets, except (i) for normal purchase and sale commitments heretofore or hereafter entered into in the ordinary course of its business; and (ii) such as are specifically approved in writing by Beatrice. Except as aforesaid, none of the rights, properties or assets of the Company are on the date hereof, or on the Closing Date will be, subject to or bound by any contract, agreement, arrangement, commitment, plan or understanding. All contracts, agreements, arrangements, commitments, plans and understandings to which the Company is a party or under which it is obligated are on the date hereof, and on the Closing Date, except as they may expire or terminate in accordance with their terms, will be valid, binding and enforceable in accordance with their respective terms.

(b) Neither the Company, nor any other party thereto, is in breach of, or default under, any contract, agree-

ment, arrangement, commitment, plan or understanding or any express or implied warranty to which the Company is a party or under which the Company is obligated; on the Closing Date the Company will not be in breach of, or default under, any contract, agreement, arrangement, commitment, plan or understanding or any express or implied warranty to which it is a party or under which it is obligated; and on the date hereof there has not occurred, and on the Closing Date there will not have occurred, any event which, after the giving of notice, or the lapse of time or otherwise, would result in a breach of, or constitute a default under, any contract, agreement, arrangement, commitment, plan or understanding or any express or implied warranty to which the Company is a party or under which the Company is obligated.

8.14. (a) The Financial Statements were prepared in accordance with generally accepted accounting principles consistently applied and present fairly (i) the financial position of the Company as of December 31, 1976, December 31, 1977 and April 30, 1978 (subject to normal year-end adjustments for recurring accruals, none of which are material in amount) and (ii) the results of its operations and changes in its financial position for the years ended December 31, 1976 and December 31, 1977 and for the four month period ended April 30, 1978 (subject to normal year-end adjustments for recurring accruals, none of which are material in amount). The Company has not used any improper accounting practices for the purpose of incorrectly reflecting on its financial statements or in its books of account, or for the purpose of not reflecting on its financial statements or in its books of account, any properties, assets, liabilities, revenues or expenses of the Company; and since at least January 1, 1974 the books of account of the Company have been maintained and prepared in accordance with the Company's normal practices, consistently applied.

(b) As of the Balance Sheet Date, the inventories of the Company, shown on the Balance Sheet were in good condition and of a quantity and quality enabling them to be usable and salable in the ordinary course of its business. Each item of inventory shown on the Balance Sheet was priced at the lower of cost (on the first-in first-out basis) or market; and as to the classes of items inventoried and methods of accounting and pricing, such inventories were determined in a manner consistent with prior years.

(c) As of the Balance Sheet Date, the Company did not have any liability of any nature (whether accrued, absolute, contingent, asserted or unasserted or otherwise) of the type which are reflected in balance sheets (including the notes thereto) prepared in accordance with generally accepted accounting principles, not disclosed or fully reflected or reserved against in the Balance Sheet.

(d) The accounts, notes and other receivables shown on the Balance Sheet have been paid or will be paid in full in the ordinary course of its business.

8.15. (a) The Company has filed proper and accurate federal, foreign, state and local tax returns and estimates for all years and periods (and portions thereof) for which any such returns, reports or estimates were due. The provision for taxes shown on the Balance Sheet is adequate to cover the aggregate liability of the Company to the Balance Sheet Date for all taxes based on the income, purchases, sales, business, capital stock or surplus, properties or assets of the Company. For the period from the Balance Sheet Date through the Closing Date, the Company has not incurred, nor will it incur, any liability for federal income taxes except for income taxes which are imposed by Section 11 of the Code. The Company has never been a member of an affiliated group of corporations filing a consolidated income tax

return nor has the Company ever made an election under Section 341(f) of the Code. No waivers by the Company of the statute of limitations with respect to federal, foreign, state or local taxes are in effect and all federal income tax returns of the Company through December 31, 1974 have been examined by the Service and the income taxes due from the Company for each of those years have been finally determined. All deficiencies proposed as a result of such examinations and all examinations for prior years have been settled and paid in full.

(b) The Company has withheld proper and accurate amounts from its employees in full and complete compliance with the tax withholding provisions of the Code and other applicable federal, foreign, state or local laws, and has filed proper and accurate federal, foreign, state and local returns and reports for all years and periods (and portions thereof) for which any such returns and reports were due with respect to employee income tax withholding and social security and unemployment taxes. All payments due from the Company on account of employee income tax withholding or social security and unemployment taxes in respect of years and periods (and portions thereof) ended on or prior to the Balance Sheet Date were paid prior to the Balance Sheet Date or accrued as a liability on the Balance Sheet.

8.16. (a) No hours worked by, or payments made to, employees of the Company have been in violation of the Fair Labor Standards Act or any other applicable federal, foreign, state or local laws.

(b) All payments due from the Company on account of employee health and welfare insurance in respect of years and periods (and portions thereof) ended on or prior to the Balance Sheet Date were paid prior to the Balance Sheet Date or accrued as a liability on the Balance Sheet.

(c) All vacation monies which have been earned by employees of the Company on or prior to the Balance Sheet Date, completely or pro rata, but which were payable subsequent to the Balance Sheet Date, have been accrued as a liability on the Balance Sheet.

(d) All severance payments which are or may become payable by the Company to any Stockholder or any director, officer or other employee of the Company under the terms of any oral or written contract, agreement, arrangement, commitment, plan or understanding in existence on the Balance Sheet Date were paid prior to the Balance Sheet Date or accrued as a liability on the Balance Sheet.

8.17. (a) The Disclosure Schedule sets forth all policies of insurance of the Company. On the date hereof all policies of insurance so set forth are in full force and effect and on the Closing Date the Company will have in full force and effect policies of insurance of the same character and coverage as the policies of insurance so set forth.

(b) Since the Balance Sheet Date, the Company has not sustained any loss on account of fire, flood, accident or other calamity which has materially and adversely interfered with, or may materially and adversely interfere with, the operation of its business, whether or not such loss shall have been insured against.

8.18. The Disclosure Schedule sets forth the names and addresses of all banks and other financial institutions in which the Company has an account, deposit, or safe-deposit box together with the names of all persons authorized to draw on these accounts or deposits or to have access to these boxes.

8.19. Neither the execution and delivery of this Agreement or the Agreement of Merger by the Company nor the consummation of the transactions contemplated hereby or thereby, do or

will, after the giving of notice, or the lapse of time, or otherwise, (i) conflict with, result in a breach of, or constitute a default under, the Articles of Organization or the By-laws of the Company or any federal, foreign, state or local law, statute, ordinance, rule, regulation or court or administrative order or process, or any contract, agreement, arrangement, commitment, plan or understanding or express or implied warranty to which the Company or any Stockholder is a party or by which the Company (or any of its rights, properties or assets) or any Stockholder are subject or bound; (ii) result in the creation of or the right to create any mortgage, pledge, lien, claim, charge, encumbrance or other adverse interest upon any right, property or asset of the Company; (iii) terminate or give any party the right to terminate, amend, abandon, or refuse to perform any contract, agreement, arrangement, commitment, plan or understanding to which the Company is a party or by which the Company (or any of its rights, properties or assets) is subject or bound; or (iv) accelerate or modify, or give any party the right to accelerate or modify, the time within which, or the terms under which, the Company is to perform any duties or obligations or receive any rights or benefits under any contract, agreement, arrangement, commitment, plan or understanding.

8.20. The Company is not on the date hereof, nor on the Closing Date will it be, conducting or carrying on its business or affairs in violation of any federal, foreign, state or local law, statute, ordinance, rule, regulation or court or administrative order or process, including, without limitation, any federal, foreign or state securities laws, and any law, statute, ordinance, rule, regulation or court or administrative order or process relating to health and safety in plants, environmental and pollution control, pricing, sales and distribution of products and services, participation and cooperation

in trade boycotts, collective bargaining rights of employees, equal opportunity in employment or political contributions and other improper payments.

8.21. The Disclosure Schedule, the Financial Statements and all other certificates, documents, instruments and affidavits furnished by the Company or any of the Stockholders in connection with this Agreement or the transactions contemplated hereby are true, accurate and complete; and neither this Agreement, nor the Agreement of Merger, nor the Financial Statements, nor the Disclosure Schedule, nor any other certificate, document, instrument or affidavit furnished by the Company or any of the Stockholders in connection with this Agreement or the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements included herein or therein not misleading.

8.22. The Company has not incurred or paid, nor will it incur or be required to satisfy or pay any liability or expense (including, without limitation, brokers', finders', investment bankers', financial advisors' fees, accountants' fees, title insurance charges, transfer, use and sales taxes) in connection with this Agreement, the Agreement of Merger and the transactions contemplated hereby and thereby, except for charges incurred in obtaining title insurance coverage in the amount of \$250,000 under the title insurance policy referred to in Section 11.9(a) of Article III hereof, the surveys referred to in Section 4.5(b) of Article IV and Section 7.1(f) of Article VII of this Agreement and except for attorneys' fees not to exceed \$40,500 in amount.

8.23. This Agreement was not induced or procured through any person, firm, corporation or other entity retained by the Company or any Stockholder acting as broker, finder, investment

banker, financial advisor or in any similar capacity and neither Beatrice nor the Company shall make, or be required to make, any payment to any person, firm, corporation or other entity for any fee or compensation claimed by any such broker, finder investment banker, financial advisor or the like.

8.24. There are no controversies pending or, to the knowledge of the Company or any Stockholder, threatened among the Company and any of its employees or any labor unions representing their interests. To the knowledge of the Company and the Indemnifying Stockholder, no union organizing or election activities involving any non-union employees of the Company are now in progress or threatened.

8.25. The Company and the Indemnifying Stockholder are unaware of any pending proceeding or formal investigation by any governmental or regulatory commission, agency or other body or authority or by any other person, firm or corporation which challenges or might result in a challenge to the consummation of the transactions contemplated by this Agreement or which claims or might give rise to a claim of damages against Beatrice, the Company or any Stockholder as a result of the consummation of the transactions contemplated hereby.

ARTICLE IX

Warranties and Representations of the Company and the Stockholders

The Company and the Stockholders, jointly and severally, warrant and represent to Beatrice, its successors and assigns, as follows:

9.1. The Company has taken all corporate action required under the Business Corporation Law of the Commonwealth of Massachusetts and its Articles of Organization and By-laws to approve, adopt and authorize this Agreement, the Agreement

of Merger and the Merger, and to authorize the execution and delivery of this Agreement and the Agreement of Merger by the Company, all as contemplated by this Agreement and the Agreement of Merger; and this Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms; and when executed and delivered by the Company the Agreement of Merger will be duly executed and delivered by the Company and will constitute a legal, valid and binding obligation of the Company, enforceable in accordance with its terms; and the Company has full right and power to enter into and perform its obligations hereunder and under the Agreement of Merger.

9.2. This Agreement has been duly executed and delivered by the Stockholders and is a legal, valid and binding obligation of each of them, enforceable in accordance with its terms; and the Stockholders have full right and power to enter into and perform their obligations hereunder.

9.3. Each Stockholder owns on the date hereof and, on the Closing Date will continue to own of record, or in the event of the death of any of them, his heirs, executors, administrators, successors or assigns will own the number of shares of capital stock of the Company set forth opposite the signature of each on the signature pages of this Agreement, free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges, restrictions or any other rights of others; and these shares of capital stock of the Company so owned by the Stockholders constitute on the date hereof, and on the Closing Date will constitute, all the issued and outstanding shares of capital stock of the Company.

ARTICLE X

Warranties and Representations of Beatrice

Beatrice warrants and represents to the Company and the Stockholders and their successors and assigns as follows:

10.1. Beatrice is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

10.2. Beatrice has taken all corporate action required under the Delaware General Corporation Law and its Certificate of Incorporation and By-laws to authorize the execution and delivery of this Agreement and the Agreement of Merger by Beatrice and the consummation of the transactions contemplated hereby, including the issuance and delivery of the shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger; and this Agreement has been duly executed and delivered by Beatrice and constitutes a legal, valid and binding obligation of Beatrice, enforceable in accordance with its terms; and when executed and delivered by Beatrice the Agreement of Merger will constitute a legal, valid and binding obligation of Beatrice, enforceable in accordance with its terms; and Beatrice has full right and power to enter into and perform its obligations hereunder and under the Agreement of Merger.

10.3. Neither the execution and delivery of this Agreement or the Agreement of Merger by Beatrice, nor the consummation of the transactions contemplated hereby or thereby, do or will, after the giving of notice, or the lapse of time, or otherwise, (i) conflict with, result in a breach of, or constitute a default under, the Certificate of Incorporation or By-laws of Beatrice, or any federal, foreign, state or local law, statute, ordinance, rule, regulation or court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Beatrice is party or by which Beatrice or any

of its material rights, properties or assets are subject or is bound; (ii) result in the creation of or the right to create any mortgage, pledge, lien, claim, charge, encumbrance or other adverse interest upon any material right, property or asset of Beatrice; (iii) terminate or give any party the right to terminate, amend, abandon, or refuse to perform any material contract, agreement, arrangement, commitment or plan to which Beatrice is a party or by which Beatrice or any of its material rights, properties or assets are subject or bound; or (iv) accelerate or modify, or give any party the right to accelerate or modify, the time within which, or the terms under which, Beatrice is to perform any duties or obligations or receive any rights or benefits under any material contract, agreement, arrangement, commitment or plan.

10.4. All shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger are duly authorized voting stock and, when issued or delivered pursuant to Article III of the Agreement of Merger, shall be duly and validly issued and fully paid and nonassessable. Such issue or delivery shall be effected in compliance with the applicable requirements of the Securities Act of 1933 and the state securities laws of Massachusetts and New Hampshire.

10.5. The Beatrice Financial Statements present fairly the financial position of Beatrice and its subsidiaries at February 28, 1978, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

10.6. Since February 28, 1978, there has been no material adverse change in the financial condition of Beatrice and its subsidiaries taken as a whole.

10.7. Beatrice is unaware of any pending proceeding or formal investigation by any governmental or regulatory commission, agency or other body or authority or by any other person, firm or corporation which challenges or might result in a challenge to the consummation of the transactions contemplated by this Agreement or which claims or might give rise to a claim of damages against Beatrice, the Company or any Stockholder as a result of the consummation of the transactions contemplated hereby.

10.8. The registration statements which contain the Prospectus are currently effective under the Securities Act, and no stop order is in effect, nor, to the knowledge of Beatrice, have any proceedings been instituted or threatened to suspend the effectiveness of such registration statements.

10.9. Beatrice has filed all reports required to be filed by Sections 13 and 15(d) of the Securities Exchange Act of 1934, as amended, during the preceding 12 months.

10.10. The Beatrice Common Stock is listed on the New York and Midwest Stock Exchanges.

10.11. This Agreement was not induced or procured through any person, firm, corporation or other entity retained by Beatrice acting as broker, finder, investment banker, financial advisor or in any similar capacity and neither the Company nor any of the Stockholders shall be required to make any payment to any person, firm, corporation or other entity for any fee or compensation claimed by any such broker, finder, investment banker, financial advisor or the like.

ARTICLE XI

Conditions Applicable to Beatrice

The obligations of Beatrice hereunder (including the obligation of Beatrice to consummate the transactions contemplated hereby) are subject to the following conditions precedent:

11.1. The warranties and representations made by the Company and the Indemnifying Stockholder herein and in the Disclosure Schedule to Beatrice shall be true and correct in all material respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date, and the Company and the Stockholders shall have performed and complied with all agreements, covenants and conditions on their part required to be performed or complied with on or prior to the Closing Date.

11.2. On the Closing Date (a) the Company shall not have any liabilities of any nature (whether accrued, absolute, contingent, asserted or unasserted or otherwise) of the type which would be reflected in balance sheets prepared in accordance with generally accepted accounting principles, other than those disclosed in the Balance Sheet, those incurred in the ordinary course of its business since the Balance Sheet Date, those set forth in the Disclosure Schedule and those agreed to in writing by Beatrice, and (b) all inventories of the Company then owned by it shall be in good condition and of a quantity and quality enabling them to be usable and salable in the ordinary course of its business.

11.3. Nothing shall have occurred after the dates of the surveys referred to in Section 4.5 of Article IV and Section 7.1(f) of Article VII hereof and on or prior to the Closing Date that would alter the accuracy of any such survey.

11.4. No proceeding or formal investigation by any governmental or regulatory commission, agency or other body or authority or by any other person, firm, corporation shall be pending on the Closing Date which challenges or might result in a challenge to the consummation of the transactions contemplated by this Agreement or which claims or might give rise to a claim of damages against Beatrice or the Company as a result of the consummation of the transactions contemplated hereby.

11.5. The registration statements which contain the Prospectus shall continue to be effective under the Securities Act on the Closing Date, and no stop order shall be in effect nor shall any proceedings have been instituted to suspend the effectiveness of such registration statements.

11.6. Beatrice shall have made and received any and all filings, qualifications and permits necessary or appropriate in the judgment of counsel for Beatrice under any state securities laws in connection with the issuance or delivery of the shares of Beatrice Common Stock provided to be issued or delivered by Beatrice under Article III of the Agreement of Merger.

11.7. At or prior to the Closing, Beatrice shall have received any and all written consents, waivers, approvals and authorizations, in form and substance satisfactory to Beatrice and its counsel, from each commission, agency and governmental or regulatory authority or body, from each officer and director of the Company, and from each other person, firm, corporation or entity, from whom any such consent, waiver, approval or authorization is required to be obtained by the Company prior to the consummation of any of the transactions contemplated hereby, whether pursuant to law, contract, agreement, understanding, commitment, plan, understanding or otherwise or from whom the failure to obtain such consent, waiver, approval or authorization prior to the consummation of any of the transactions contemplated hereby might have an adverse effect on Beatrice or the Company.

11.8. John J. Riley, Jr. shall not be deemed to have suffered or incurred any illness or injury which may cause him to become mentally or physically incapacitated.

11.9. At the Closing the Stockholders shall have delivered to Beatrice:

(a) Owner's title insurance policy which was issued the Closing Date, on ALTA 1970 Owner's Form, which provided coverage

endorsement guaranteeing over the standard exceptions to title customarily contained in such policies, and with such other endorsements and provisions as Beatrice may in its discretion deem appropriate, covering the real estate covered by the preliminary reports referred to in Section 4.5(a) of Article IV hereof issued by the title insurance company which issued such preliminary reports, (i) insuring, as of the Closing Date, the fee simple estate of Beatrice in each such parcel of real estate in the amount set forth in such preliminary reports subject only to the matters set forth in clauses (A) and (B) of Section 4.5(a) of Article IV hereof, and (ii) insuring Beatrice against the lack of a right of access to and from each such parcel of real estate via a public road or highway.

(b) A certificate, dated the Closing Date, and executed by the Indemnifying Stockholder to the effect that the conditions set forth in Sections 11.1, 11.2 and 11.3 of this Article XI have been satisfied.

(c) All certificates representing the shares of capital stock of the Company which are owned by the Stockholders immediately prior to the Effective Date of the Merger and which are to be changed and converted into shares of Beatrice Common Stock as a result of the Merger.

(d) The opinion of Nutter, McClennen & Fish, counsel for the Company, dated the Closing Date, in the form of Exhibit C to this Agreement with only such changes as shall not affect the substance of such opinion and as shall be reasonably acceptable to Beatrice and its counsel.

11.10. All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement, and all certificates, documents and instruments incident hereto, shall be reasonably satisfactory in form and substance to Beatrice and its counsel, and Beatrice and its counsel shall

have received copies of all such documents and instruments as Beatrice and its counsel may reasonably request in connection with such transactions.

Beatrice shall have the right to waive any of the foregoing conditions precedent.

ARTICLE XII

Conditions to Closing Applicable to the Company and Stockholders

The obligations of the Company and the Stockholders hereunder (including the obligation of the Company and the Stockholders to consummate the transactions contemplated hereby) are subject to the following conditions precedent:

12.1. The warranties and representations made by Beatrice herein to the Company and the Stockholders shall be true and correct in all material respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date, and Beatrice shall have performed and complied with all agreements, covenants and conditions on its part required to be performed or complied with on or prior to the Closing Date.

12.2. No proceeding or formal investigation by any governmental or regulatory commission, agency or other body or authority or by any other person, firm, corporation or entity shall be pending on the Closing Date which challenges or might result in a challenge to the consummation of the transactions contemplated by this Agreement or which claims or might give rise to a claim of damages against the Company or any Stockholder as a result of the consummation of the transactions contemplated hereby.

12.3. At the Closing, Beatrice shall have delivered to the Company and the Stockholders:

(a) The opinion of Winston & Strawn, dated the Closing Date, in the form of Exhibit D to this Agreement with only such changes as shall not affect the substance of such opinion and as shall be reasonably acceptable to the Company and its counsel.

(b) A certificate, dated the Closing Date, executed by the Chairman of the Board, the Deputy Chairman of the Board, the Vice Chairman of the Board, the President or any Executive, Senior or other Vice President of Beatrice, to the effect that the conditions set forth in Section 12.1 of this Article XII have been satisfied.

12.4. All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement, and all documents and instruments incident thereto, shall be reasonably satisfactory in form and substance to the Company and its counsel, and the Company and its counsel shall have received copies of all such documents and instruments as the Company and its counsel may reasonably request in connection with such transactions.

The Company and the Stockholders shall have the right to waive any of the foregoing conditions precedent.

ARTICLE XIII

Failure of Satisfaction of Conditions Precedent

13.1. In the event that any condition precedent to the obligations of Beatrice which are set forth in Article XI hereof or any condition precedent to the obligations of the Company and the Stockholders which are set forth in Article XII hereof is not satisfied or fulfilled as of the date established as the Closing Date pursuant to Section 3.2 hereof then such party or parties, as the case may be, whose performance of obligations under this Agreement is subject to such unsatisfied

condition precedent may, by written notice given to the other party or parties on such Closing Date:

(a) proceed with the Closing on the Closing Date;

or

(b) postpone the Closing Date for a period of up to 30 days, during which period the party or parties which have failed to satisfy or fulfill such condition precedent shall, if it is reasonably within its or their power to do so within such 30 day period without the incurrence of expenditures in excess of \$30,000, use its or their best efforts to cause such condition precedent to be satisfied and fulfilled; or

(c) terminate this Agreement, without any further rights, liabilities, duties or obligations on the part of any party hereto under either this Agreement or the Agreement of Merger.

13.2. In the event that any party hereto elects to proceed with the Closing pursuant to Section 13.1(a) hereof despite the failure by any other party to fulfill or satisfy any condition precedent, then that party shall be deemed to have waived the satisfaction and fulfillment of such condition, and any claim it may have to recover from such other party any loss, damage or expense which the waiving party might suffer as a result of the specified cause of such failure to satisfy or fulfill such condition precedent, or as a result of the non-intentional breach of Section 4.5(a) hereof or of any of the warranties and representations set forth in Articles VIII, IX or X hereof that gave rise to or resulted in the failure to fulfill or satisfy such condition precedent; provided that no such waiver shall apply to any such claim to recover to the extent the cause of such failure is a breach of any covenant set forth in Article IV (except for Section 4.5(a) thereof), V or VI hereof, and each claim to recover for any loss, damage or expense which might result from such breach shall survive any waiver of any condition precedent.

ARTICLE XIV

Post Closing Assurances

If at any time after the Effective Date of the Merger Beatrice shall consider or be advised that any further assignments or assurances in law or any other things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in Beatrice the title to any properties or rights of the Company acquired or to be acquired by reason of or as a result of the Merger, the directors and officers of the Company shall and will in the name of the Company or otherwise, execute and deliver all such proper deeds, assignments and assurances in law and do all things necessary and proper to vest, perfect or confirm title to such properties and rights in Beatrice and otherwise to carry out the purposes of this Agreement and the Agreement of Merger, and the proper directors and officers of Beatrice are fully authorized in the name of the Company or otherwise to take any and all such action.

ARTICLE XV

Indemnification of Beatrice

15.1. The Indemnifying Stockholder agrees to indemnify and hold Beatrice harmless against any loss, damage or expense (including reasonable attorneys' fees) suffered by Beatrice resulting from (i) any inaccuracy in or breach of any of the warranties, representations, covenants or agreements made by the Company or the Stockholders herein or in the Disclosure Schedule, and (ii) any inaccuracy or misrepresentation in the Disclosure Schedule, or in any certificate, document, instrument or affidavit delivered by the Company or any of the Stockholders at the Closing in accordance with the provisions of this Agreement; provided, however, that, (a) Beatrice shall not be entitled to assert any right of indemnification pursuant to this Section 15.1 with respect

to the first \$30,000 in the aggregate of such loss, damage or expense suffered by Beatrice; (b) Beatrice shall not be entitled to assert any right of indemnification pursuant to this Section 15.1 for any loss, damage or expense which Beatrice might suffer subsequent to the Closing Date as a result of a breach of the warranties and representations contained in Section 8.7(a) hereof only to the extent to which Beatrice receives a cash award for such loss, damage or expense from Chicago Title Insurance Company under the owner's title insurance policy to be delivered to Beatrice pursuant to Section 11.9(a) hereof; (c) Beatrice shall not be entitled to assert any right of indemnification pursuant to this Section 15.1 after the Warranty Termination Date (as defined in Section 17.2 hereof) with respect to those warranties, representations, covenants and agreements which terminate on the Warranty Termination Date as provided in Section 17.2(a) of Article XVII hereof except that if there shall then be pending any dispute, claim, action or proceeding involving a Claim (as that term is defined in paragraph 7(a) of the Escrow Agreement) under this Section 15.1 with respect to such warranties, representations, covenants and agreements, Beatrice shall continue to have the right to assert such Claim and be indemnified with respect thereto after the Warranty Termination Date; and (d) Beatrice shall not be entitled to assert any right of indemnification pursuant to this Section 15.1 after the termination of the escrow created under the Escrow Agreement with respect to those warranties and representations made in Sections 8.15(a) and (b) of Article VIII hereof, except that if there shall then be pending any dispute, claim, action or proceeding involving a Claim under this Section 15.1 with respect to such warranties and representations, Beatrice shall continue to have the right to assert such Claim and to be indemnified with respect thereto after the termination of such escrow. In case any event

shall occur which would entitle Beatrice to a right of indemnification hereunder, no loss, damage or expense shall be deemed to have been sustained by Beatrice to the extent of tax savings realizable by Beatrice as a result of the event giving rise to such right of indemnification after taking into account any taxes payable by Beatrice on any amounts paid by the Indemnifying Stockholder to Beatrice in satisfaction of any claim. The liability of the Indemnifying Stockholder hereunder shall not, however, be limited to the shares deposited in escrow by the Indemnifying Stockholder under the Escrow Agreement.

15.2. In order to secure the Indemnifying Stockholder's agreement of indemnification set forth in this Article XV the Indemnifying Stockholder will, at Closing, execute and deliver the Escrow Agreement to Beatrice and the Escrowee and shall, immediately upon receipt of a certificate representing 10,000 shares of Beatrice Common Stock deposit with the Escrowee such certificate (duly endorsed in blank or with stock powers attached thereto duly endorsed in blank, in either case with signature guaranteed by a commercial bank or trust company having a correspondent in Chicago, Illinois or by a broker who is a member of the New York, American or Midwest Stock Exchange).

ARTICLE XVI

Disposition of Beatrice Common Stock Deliverable Pursuant to Agreement of Merger

16.1. Each Stockholder acknowledges that he has been furnished with copies of Rules 144 and 145 under the Securities Act, and has been informed that (i) the Merger constitutes a transaction covered by Rule 145 under the Securities Act, (ii) each Stockholder may be deemed to be an affiliate of the Company within the meaning of paragraph (c) of Rule 145 under the Securities Act and may be deemed to be engaged in a distribution of securities, and therefore an underwriter of securities within

the meaning of Section 2(11) of the Securities Act, if he at any time publicly offers or sells shares of Beatrice Common Stock which he may acquire in connection with the Merger, unless each such offer and sale is effected as provided in paragraph (d) of Rule 145 under the Securities Act or pursuant to an effective registration statement under the Securities Act, and (iii) Beatrice has no obligation to register any shares of Beatrice Common Stock which any Stockholder may acquire in connection with the Merger for sale by such Stockholder.

16.2. Each Stockholder covenants and agrees with Beatrice that:

(a) Unless and until Beatrice consents otherwise in writing, which consent shall not be unreasonably withheld, any and all shares of Beatrice Common Stock (herein sometimes collectively referred to as "Restricted Securities") issued or delivered to the Stockholders in connection with the Merger in exchange for shares of the capital stock of the Company owned by each Stockholder on the Effective Date of the Merger, and any and all shares of Beatrice Common Stock and other securities paid as a dividend or otherwise distributed thereon or in respect thereto, and any and all shares of Beatrice Common Stock and other securities issued or delivered in exchange or substitution therefor or upon the transfer thereof (except for securities issued or delivered as a result of a sale effected in compliance with Rule 145(d) under the Securities Act) shall be stamped or otherwise imprinted with a legend in substantially the following form:

"The securities represented by this certificate are transferable only upon, and are otherwise subject to, certain conditions specified in that certain Agreement and Plan of Reorganization made August 24th 1978 by and among Beatrice Foods Co., John J. Riley Company and the stockholders thereof, and no transfer of the securities represented by this certificate shall be valid or effective until such conditions have been fulfilled and satisfied. Copies of such Agreement and Plan of Reorganization are on file with the Secretary of Beatrice Foods Co. and the transfer agents of Beatrice Foods Co. Common Stock."

(b) Unless and until Beatrice consents otherwise in writing, no Stockholder will transfer (by sale, gift, pledge or otherwise, and whether or not the transfer constitutes a sale within the meaning of Section 2(3) of the Securities Act) any Restricted Securities, unless such transfer is effected as provided in paragraph (d) of Rule 145 under the Securities Act or in some other manner which does not require the registration of such securities under the Securities Act.

(c) Unless and until Beatrice consents otherwise in writing, no Stockholder will transfer (by sale, gift, pledge or otherwise, and whether or not the transfer constitutes a sale within the meaning of Section 2(3) of the Securities Act) any Restricted Securities, unless, prior to such transfer, such Stockholder shall have delivered to Beatrice:

(i) A written notice from him in form and substance reasonably satisfactory to Beatrice and its legal counsel, describing the transfer, including, the nature of the transfer and the amount of Restricted Securities to be transferred.

(ii) An opinion of legal counsel, in form and substance reasonably satisfactory to Beatrice and its legal counsel, stating that the transfer may be effected without registration under the Securities Act.

(iii) If the transfer is to be a sale in reliance upon paragraphs (c), (e), (f) and (g) of Rule 144 under the Securities Act, a compliance certificate from the broker who is to effect the sale, in form and substance reasonably satisfactory to Beatrice and its legal counsel, stating that the transfer shall be effected in accordance with the provisions of paragraph (g) of Rule 144 under the Securities Act.

(iv) If the proposed transfer is not to be a sale in reliance upon paragraph (d) of Rule 145, under the Securities Act, a letter agreement from the transferee, in form and substance satisfactory to Beatrice and its legal counsel, stating that such transferee agrees to be bound by the terms and restrictions contained in this Article XVI of this Agreement.

16.3. Beatrice covenants and agrees that within ten (10) days after the receipt by Beatrice and its counsel of the documents referred to in Section 16.2(c) hereof it shall instruct its transfer agent to complete any proposed transfer of Restricted Securities by a Stockholder as provided in such documents and, if the proposed transfer is to be a sale in reliance upon paragraph (d) of Rule 145 under the Securities Act, to remove any legend restricting transferability of such Restricted Securities and any stop order which may have been placed against the transfer of the certificates representing such Restricted Securities in order to ensure compliance with the Securities Act; provided, however, that Beatrice shall not be required to so instruct its transfer agent if in the written opinion of Beatrice's counsel there is a significant probability that such proposed transfer would violate the Securities Act.

ARTICLE XVII

Miscellaneous

17.1. Expenses. Beatrice will pay its own costs and expenses (including attorneys' fees, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, and execution and delivery of this Agreement, the Agreement of Merger and the consummation of the transactions contemplated hereby and thereby. The Stockholders will pay their own costs and expenses and the costs and expenses of the Company

(including attorneys' fees, title insurance charges, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, and execution and delivery of this Agreement, the Agreement of Merger and the consummation of the transactions contemplated hereby and thereby, except that charges incurred in obtaining title insurance coverage in the amount of \$250,000 under the title insurance policy referred to in Section 11.9(a) of Article XI hereof, the surveys referred to in Section 4.5(a) of Article IV and Section 7.1(f) of Article VII of this Agreement and attorneys' fees not to exceed \$40,500 in amount may be paid by the Company.

17.2. Termination of Warranties, Representations, Covenants and Agreements.

(a) All the warranties, representations, covenants and agreements made by the Company and the Stockholders in connection with this Agreement or the transactions contemplated hereby shall survive the Closing Date and the Effective Date of the Merger, regardless of what investigations Beatrice shall have made with respect thereto prior to the Closing, but they shall terminate on the date three years following the Closing Date (hereinafter referred to as the "Warranty Termination Date"), except for those warranties and representations made in Sections 8.15(a) and (b) of Article VIII hereof; provided however, that if there shall be pending on the Warranty Termination Date any demand, dispute, claim, proceeding or action involving a claim under this Agreement, each such warranty, representation, covenant and agreement made by the Stockholders herein shall survive the Warranty Termination Date insofar as it relates to such then pending demand, dispute, claim, proceeding or action until such demand, dispute, claim, proceeding or action is finally concluded and the obligations of the Stockholders with respect thereto are fully satisfied.

(b) The warranties and representations made by the Indemnifying Stockholder in Sections 8.15(a) and (b) of Article VIII hereof shall survive the Closing and the Effective Date of the Merger, regardless of what investigations Beatrice shall have made with respect thereto prior to the Closing, but they shall terminate on the Termination Date (as defined in the Escrow Agreement); provided, however, that if there shall be pending on the Termination Date any demand, dispute, claim, proceeding or action involving a claim under this Agreement, each such warranty and representation shall survive the Termination Date insofar as it relates to such then pending demand, dispute, claim, proceeding or action until such demand, dispute, claim, proceeding or action is finally concluded and the obligations of the Indemnifying Stockholder with respect thereto are fully satisfied.

(c) All the warranties, representations, covenants and agreements made by Beatrice herein shall survive the Closing Date and the Effective Date of the Merger, regardless of what investigations the Company or the Stockholders shall have made with respect thereto prior to the Closing, but they shall terminate on the Termination Date; provided, however, that if there shall be pending on the Termination Date any demand, dispute, claim, proceeding or action involving a claim under this Agreement, each such warranty, representation, covenant and agreement made by Beatrice herein shall survive the Termination Date insofar as it relates to such then pending demand, dispute, claim, proceeding or action until such demand, dispute, claim, proceeding or action is finally concluded and the obligations of Beatrice with respect thereto are fully satisfied.

17.3. Notices. Unless notified to the contrary, any notice or other communication required or permitted under this Agreement shall be effectively delivered for all purposes if

delivered personally or if mailed, upon deposit in the United States mail, postage prepaid, and, if directed to Beatrice, properly addressed to Beatrice at 120 South LaSalle Street, Chicago, Illinois 60603, Attention: Wallace N. Rasmussen, Chief Executive Officer, with a copy thereof addressed and mailed to Winston & Strawn, Suite 5000, One First National Plaza, Chicago, Illinois 60603, Attention: Norman Waite, Jr., and, if directed to the Company, properly addressed to it at 9 Huntington Road, Lynnfield, Massachusetts 01940, Attention: John J. Riley, Jr., President, with a copy thereof addressed and mailed to Nutter, McClennen & Fish, Federal Reserve Plaza, 600 Atlantic Avenue, Boston, Massachusetts 02110, Attention: Dana Coggins.

17.4. Amendments and Waivers. Amendments to this Agreement may be by an instrument or instruments in writing signed by the Chairman of the Board, the Deputy Chairman of the Board, the Vice Chairman of the Board, the President or any Executive, Senior or other Vice President of Beatrice, the President of the Company and the Indemnifying Stockholder. Waivers to any provisions of this Agreement by Beatrice may be made by an instrument or instruments in writing signed by the Chairman of the Board, the Deputy Chairman of the Board, the President or any Executive, Senior or other Vice President of Beatrice. Waivers to any provisions of this Agreement by the Company and the Stockholders may be made by an instrument or instruments in writing signed by the President of the Company and the Indemnifying Stockholder. No such amendment or waiver hereunder shall be effective unless and until made by such an instrument or instruments in writing. No such amendment or waiver hereunder shall require approval by the Board of Directors of Beatrice or the Company or its stockholders whether made before or after director or stockholder approval of this Agreement and by his execution hereof each of the Stockholders does hereby constitute

and appoint the Indemnifying Stockholder to act as his representative and attorney-in-fact in amending or waiving any of the provisions hereof and each such Stockholder hereby covenants and agrees that any amendment or waiver of any provision hereof which is made in accordance with the provisions of this Section 17.4 shall be binding and enforceable against him.

17.5. Headings. The headings of the Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

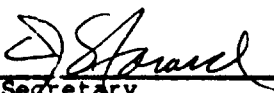
17.6 Identical Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument; but all such counterparts together shall constitute but one agreement.

17.7 Binding Agreement. This Agreement shall inure to the benefit of and shall be binding upon and enforceable against any successors or assigns of Beatrice and the Company, respectively, and any successors, assigns, executors, administrators, heirs and legatees of the Stockholders. Neither this Agreement, nor any rights hereunder or any interests herein shall be assignable by any party hereto without the prior written consent of the other parties hereto.

IN WITNESS WHEREOF, Beatrice, the Company and the Stockholders have executed and delivered this Agreement on the day and the year first above written.

BEATRICE FOODS CO.
a Delaware corporation

ATTEST:


Secretary

By 
Its EXECUTIVE VICE PRESIDENT

JOHN J. RILEY COMPANY,
a Massachusetts corporation

ATTEST:

Edward J. Riley, Jr.
Clerk

By John J. Riley, Jr.
its President

WITNESS:

Margaret Ann Metzger

Number of shares of
the Company Owned

Number of shares
of Beatrice Common
Stock to be issued
and delivered to the
Stockholders in accord-
ance with Section 3.01(b)
of Article III of the STOCKHOLDERS
Agreement of Merger

15,145

70,771

John J. Riley, Jr.
John J. Riley, Jr.,
an Indemnifying Stockholder

1,731

8,089

Diana W. Riley
Diana W. Riley

1,131

5,285

Helen D. Riley
Helen D. Riley

1,131

5,285

John J. Riley, Jr. Trustee
John J. Riley, Jr.,
Trustee for Ann C. Riley

1,131

5,285

John J. Riley, Jr. Trustee
John J. Riley, Jr.,
Trustee for John J.
Riley, III

1,131

5,285

Diana W. Riley, Trustee
Diana W. Riley,
Trustee for Peter A.
Riley

Exhibit A

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called "this Agreement") dated as of _____, 1978, between BEATRICE FOODS CO., a Delaware corporation (hereinafter called "Beatrice" and sometimes called the "Surviving Corporation"), and JOHN J. RILEY COMPANY, a Massachusetts corporation (hereinafter sometimes called the "Company") and Beatrice and the Company being sometimes hereinafter collectively called "Constituent Corporations";

WHEREAS, Beatrice was incorporated in the State of Delaware pursuant to the General Corporation Law on November 20, 1924, and its registered office in the State of Delaware is located at No. 306 South Street, Dover, Delaware; and

WHEREAS, Beatrice is licensed to transact business as a foreign corporation in the Commonwealth of Massachusetts; and

WHEREAS, Beatrice has an authorized capital stock consisting of 220,000,000 shares of which 200,000,000 shares are common stock, without par value, (hereinafter sometimes called "Beatrice Common Stock"), and 20,000,000 shares are preference stock, without par value (hereinafter sometimes called "Beatrice

Preference Stock"), of which 90,988,474 shares of Beatrice Common Stock, 7,854 shares of Beatrice Preference Stock designated \$2.70 Convertible Preference Stock, 56,006 shares of Beatrice Preference Stock designated \$4.00 Convertible Preference Stock, Second Series, and 55,971 shares of Beatrice Preference Stock designated \$4.50 Convertible Preference Stock, Second Series were issued and outstanding (excluding 48,244 shares of Beatrice Common Stock which were held in its treasury) as of February 28, 1978; and

WHEREAS, the Company was incorporated in the Commonwealth of Massachusetts on August 11, 1915 and is subject to the Business Corporation Law of Massachusetts; and

WHEREAS, the Company has authorized 100,000 shares, with \$.50 par value per share, (hereinafter called the "Company's Common Shares"), of which 21,400 shares were issued and outstanding and 28,600 shares were held in its treasury as of February 28, 1978; and

WHEREAS, the Boards of Directors of Beatrice and the Company deem it advisable for the general welfare and advantage of each corporation and their respective stockholders that the Company merge (hereinafter sometimes called the "Merger") with and into Beatrice pursuant to this Agreement, and Beatrice and the Company respectively desire to so merge pursuant to this

Agreement and pursuant to the applicable provisions of the laws of the State of Delaware and the Commonwealth of Massachusetts.

NOW, THEREFORE in consideration of the premises and the mutual provisions, covenants, conditions and grants herein contained and in accordance with the provisions of the Delaware General Corporation Law and the Business Corporation Law of Massachusetts, the parties hereto mutually covenant and agree as follows:

ARTICLE I

Plan of Merger

1.01. On the Effective Date of the Merger (as defined in paragraph 4.01 hereof) the Company shall be merged with and into Beatrice which shall be the Surviving Corporation. The corporate existence of the Company with all its purposes, powers and objects shall continue unaffected and unimpaired by the Merger; and as the Surviving Corporation Beatrice shall be governed by the laws of the State of Delaware and succeed to all rights, assets, liabilities and obligations of the Company as set forth in the Delaware General Corporation Law and the Business Corporation Law of Massachusetts. The separate existence and corporate organization of the Company shall cease upon the Effective Date of the Merger and thereafter Beatrice shall continue as the Surviving Corporation under the laws of the State of Delaware.

1.02. If at any time after the Effective Date of the Merger the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or any other things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, the title to any property or right of the Company acquired or to be acquired by reason of or as a result of the Merger, the directors and officers of the Company shall and will in the name of the Company or otherwise, execute and deliver all such proper deeds, assignments and assurances in law and do all things necessary and proper to vest, perfect or confirm title to such property and rights in the Surviving Corporation and otherwise to carry out the purpose of this Agreement, and the proper directors and officers of the Surviving Corporation are fully authorized in the name of the Company or otherwise to take any and all such action.

1.03. The Surviving Corporation hereby agrees that it may be sued in the Commonwealth of Massachusetts in any proceeding for the enforcement of any prior obligation of the Company and in any proceeding for the enforcement of any obligation hereafter incurred by the Surviving Corporation, including the obligation created by Chapter 156 B, Section 85, of the Business Corporation Law of Massachusetts, so long as any liability remains outstanding against the Surviving Corporation in the Commonwealth of Massachusetts; and the Surviving Corporation hereby irrevocably appoints the state secretary of the Commonwealth

of Massachusetts as its agent to accept service of process in any action for the enforcement of any such obligation, including taxes.

ARTICLE II

Certificate of Incorporation

By-Laws; Board of Directors; Officers

2.01. The Certificate of Incorporation of Beatrice as in effect on the Effective Date of the Merger shall be the Certificate of Incorporation of the Surviving Corporation, until amended as provided by law.

2.02. The By-Laws of Beatrice as in effect on the Effective Date of the Merger shall be the By-Laws of the Surviving Corporation, until altered, amended or repealed in accordance with law, the Certificate of Incorporation of the Surviving Corporation or said By-Laws.

2.03. The directors and officers of Beatrice on the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation, until their successors shall have been elected and shall qualify or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the By-Laws of the Surviving Corporation.

2.04. If on the Effective Date of the Merger a vacancy shall exist in the Board of Directors or in any of the offices

of the Surviving Corporation, such vacancy may thereafter be filled in the manner provided by law, the Certificate of Incorporation of the Surviving Corporation or the By-Laws of the Surviving Corporation.

ARTICLE III

Conversion of Shares

The manner of converting the shares of each of the Constituent Corporations into shares or securities of the Surviving Corporation or other consideration to be delivered in exchange for the Company's Common Shares shall be as follows:

3.01. On the Effective Date of the Merger:

(a) All shares of Beatrice Common Stock and Beatrice Preference Stock ther issued (including shares held in the treasury of Beatrice) shall continue to be issued shares, and thereafter each certificate of Beatrice evidencing ownership of any such shares shall continue to evidence ownership of the same number of shares of Beatrice Common Stock or Beatrice Preference Stock.

(b) Subject to the provisions of paragraphs 3.01(d) and 3.02 hereof, each of the Company's Common Shares then issued and outstanding shall be changed and converted into 4.6729 shares

of the Beatrice Common Stock (100,000 shares of Beatrice Common Stock in the aggregate).

(c) Each of the Company's Common Shares then issued and held by the Company in its treasury shall be cancelled.

(d) Beatrice shall not be required to issue and no certificate shall be issued for a fraction of a share of Beatrice Common Stock in respect of fractional interests, nor shall any cash payment be made in lieu of any fractional interest, but fractional interests shall be rounded as provided in paragraph 3.02 hereof.

3.02. On and after the Effective Date of the Merger each holder of the Company's Common Shares outstanding on the Effective Date of the Merger, upon presentation and surrender of a certificate or certificates therefor to the Surviving Corporation, or its designated agent, shall be entitled to receive in exchange therefor a certificate or certificates representing the number of whole shares of Beatrice Common Stock (rounded to the nearest whole share) into which the aggregate number of the Company's Common Shares represented by the certificate or certificates so surrendered shall have been changed and converted as aforesaid. Until so surrendered, each outstanding certificate which, prior to the Effective Date of the Merger, represented the Company's Common Shares shall be deemed for all purposes

(except as hereinafter provided with respect to the time of payment of dividends) to evidence ownership of the number of whole shares of Beatrice Common Stock into which such of the Company's Common Shares shall have been so changed and converted. Unless and until such outstanding certificates theretofore representing the Company's Common Shares are so surrendered, no dividends payable to the holders of record of Beatrice Common Stock shall be paid to the holders of such outstanding certificates representing the Company's Common Shares, provided; however, that upon surrender and exchange of such outstanding certificates there shall be paid to the record holders of the certificates representing Beatrice Common Stock issued in exchange for such outstanding certificates, the amount, without interest thereon, of dividends and other distributions, if any, which theretofore has become payable with respect to the shares of Beatrice Common Stock represented by such certificates.

ARTICLE IV

General

4.01. This Agreement shall be filed and recorded in the State of Delaware and Articles of Merger which set forth this Agreement in full shall be filed in the Commonwealth of Massachusetts in accordance with the applicable filing and recording requirements of the Delaware General Corporation Law and the applicable filing requirements of the Business Corpo-

ration Law of Massachusetts on such date as may be agreed upon by the Constituent Corporations. The Merger shall become effective upon the latter to occur of such filings with the Secretaries of State of Delaware and Massachusetts. The date upon which the Merger shall become effective is referred to herein as the "Effective Date of Merger".

4.02. This Agreement and the transactions contemplated herein may be terminated at any time prior to the Effective Date of the Merger by mutual consent of the Boards of Directors of Beatrice and the Company.

4.03. This Agreement may be executed in any number of counterparts or may be, where the same is not required, certified or otherwise delivered without the testimonium clause and signatures. Each counterpart hereof shall be deemed to be an original instrument; but all such counterparts together shall constitute but one agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year first above written by the President or a Vice President, the Treasurer or an Assistant Treasurer, and the Secretary or Clerk or an Assistant Secretary or Clerk of each corporate party hereto as directed by the Boards of Directors of each corporate party hereto.

BEATRICE FOODS CO.

(CORPORATE SEAL)

Attest:

By _____

By _____

Secretary

JOHN J. RILEY COMPANY

(CORPORATE SEAL)

Attest:

By _____
President

By _____
Treasurer

Clerk

I, the undersigned, H. ROBERT WINTON, JR. hereby do certify under the seal of the corporation that I am the Secretary of BEATRICE FOODS CO., a corporation organized and existing under the laws of the State of Delaware (the "Surviving Corporation"); that the Agreement and Plan of Merger to which this certificate is attached was duly adopted pursuant to Section 252 of the General Corporation Law of the State of Delaware without any vote of its stockholders (as permitted by Section 252(e) and 251(f) of the General Corporation Law of the State of Delaware), and that the Agreement and Plan of Merger does not amend in any respect the Certificate of Incorporation of the Surviving Corporation; that each share of stock of the Surviving Corporation outstanding immediately prior to the Merger becoming effective shall remain outstanding immediately after the Merger as an identical share of the Surviving Corporation, and the authorized unissued shares or the treasury shares of Common Stock of the Surviving Corporation to be issued or delivered under the Agreement and Plan of Merger do not exceed 20% of the shares of Common Stock of the Surviving Corporation outstanding as of the date of the Certificate and no shares, securities or obligations convertible into Common Stock of the Surviving Corporation are to be issued or delivered under the Agreement and Plan of Merger; and that the Agreement and Plan of Merger was adopted by action of the Board of Directors of said BEATRICE FOODS CO., and is the duly adopted agreement and act of the said corporation.

IN WITNESS WHEREOF, I have executed this certificate
on this ____ day of _____, 1978.

H. Robert Winton, Jr.
Secretary

(CORPORATE SEAL)

THE ABOVE AGREEMENT AND PLAN OF MERGER having been executed on behalf of each corporate party thereto, and having been adopted separately by each corporate party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware and the Business Corporation Law of Massachusetts, the President or Vice President of each corporate party thereto does now hereby execute the said Agreement and Plan of Merger and the Secretary or Assistant Secretary of each corporate party thereto does now hereby attest the said Agreement and Plan of Merger under the corporate seals of their respective corporations, by authority of the directors of BEATRICE FOODS CO. and the directors and stockholders of JOHN J. RILEY COMPANY, as the respective act, deed and agreement of each of said corporations, on this ____ day of _____, 1978.

BEATRICE FOODS CO.

(CORPORATE SEAL)

By _____
____ President and _____

Attest:

Secretary

JOHN J. RILEY COMPANY

(CORPORATE SEAL)

By _____
____ President

Attest:

Secretary

EXHIBIT B

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made this ____ day of _____, 1978, by and among BEATRICE FOODS CO., a Delaware corporation ("Beatrice"), John J. Riley, Jr. (hereinafter referred to as the "Indemnifying Stockholder") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, as escrowee (the "Escrowee");

W I T N E S S E T H:

WHEREAS, JOHN J. RILEY COMPANY, a Massachusetts corporation (the "Company"), the stockholders of the Company, and Beatrice have entered into an Agreement and Plan of Reorganization made _____, 1978 (the "Agreement"), a copy of which has been delivered to the Escrowee, contemplating the merger of the Company with and into Beatrice on the date of this Escrow Agreement (the date upon which such merger is consummated being herein called the "Effective Date of the Merger"); and

WHEREAS, the parties desire to establish pursuant to the terms of the Agreement an escrow arrangement to provide a mechanism to secure the agreement of indemnification of the Indemnifying Stockholder contained in the Agreement.

NOW, THEREFORE, it is agreed:

1. Delivery to Escrowee.

On the Effective Date of the Merger the Indemnifying Stockholder will deliver to the Escrowee a single certificate registered in his name representing 10,000 shares of Beatrice Common Stock, without par value (the "Beatrice Common Stock"),

together with a stock power attached thereto duly endorsed by him in blank, with his signature guaranteed by a commercial bank having a correspondent in Chicago, Illinois, or a broker who is a member of the New York, American or Midwest Stock Exchange. Such certificates shall remain registered in the name of the Indemnifying Stockholder, or if the Escrowee in its sole discretion transfers such certificates into its name or the name of its nominee, then such certificates shall remain registered in the name of the Escrowee or its nominee, as the case may be, until delivered to Beatrice or the Indemnifying Stockholder as provided herein.

2. Collateral.

The shares of Beatrice Common Stock and stock power delivered to the Escrowee pursuant to paragraph 1 hereof together with all additional shares which may be distributed by Beatrice with respect thereto by way of conversion, stock dividend, stock split, reclassification, recapitalization or corporate reorganization are all hereinafter collectively called the "Collateral" and shall be received and held by the Escrowee pursuant to the terms and conditions of this Escrow Agreement. All cash dividends, if any, paid with respect to the Collateral to the Escrowee shall not constitute part of the Collateral and shall be distributed by the Escrowee promptly after receipt to the Indemnifying Stockholder.

3. Claims Against Beatrice.

(a) Upon obtaining knowledge thereof, Beatrice shall promptly notify either the Indemnifying Stockholder or the Representative (as hereinafter defined) of any claim which Beatrice has determined has given or could give rise to a right of indemnification under Article XV of the Agreement. If such claim relates to a claim asserted by a third party against Beatrice,

then within 60 days after the giving of such notice by Beatrice the Indemnifying Stockholder (or the Representative) shall give notice to Beatrice that he admits or denies that such claim is a claim which would, if valid, result in loss, damage or expense to Beatrice indemnifiable under Article XV of the Agreement. If either the Indemnifying Stockholder (or the Representative) shall fail to give such notice to Beatrice within such time, then such claim shall be conclusively deemed to be a claim which would, if valid, result in loss, damage or expense to Beatrice under the Agreement. No denial by either the Indemnifying Stockholder (or the Representative) that such a claim is a claim which would, if valid, result in loss, damage or expense to Beatrice indemnifiable under Article XV of the Agreement shall limit any rights of Beatrice under either of paragraphs 4 or 5 hereof.

(b) If such claim relates to a claim asserted by a third party against Beatrice, and if the Indemnifying Stockholder (or the Representative) shall admit that such claim would, if valid, result in loss, damage or expense indemnifiable under the Agreement as provided in paragraph 3(a) above, then the Indemnifying Stockholder (or the Representative) shall have a reasonable time to contest such claim and shall have the right, at his expense, to employ counsel acceptable to Beatrice to defend any such claim asserted against Beatrice and Beatrice shall have the right, at its expense, to cooperate in the defense of any such claim. If the Indemnifying Stockholder (or the Representative) is unwilling to admit that such claim would, if valid, result in loss, damage or expense indemnifiable under Article XV of the Agreement, he shall nevertheless have the right, at his expense, to cooperate with Beatrice in the defense of any such claim; provided, however, that Beatrice shall have the right to exercise control over the defense of and to settle any such

claim in such manner as it may in its sole discretion deem advisable. Beatrice shall make available to the Indemnifying Stockholder (or the Representative) or his representatives all records and other materials required by him for his use in contesting, or cooperating in the defense of, any such claim, as may be the case. In the event the Indemnifying Stockholder (or the Representative) admits that a claim would, if valid, result in loss, damage or expense indemnifiable under the Agreement then Beatrice will not settle any such claim so long as the Indemnifying Stockholder (or the Representative) is defending it in good faith. Nothing herein shall be deemed to require Indemnifying Stockholder (or the Representative) or Beatrice to defend any such claim.

4. Notice of Loss.

In the event that any event or condition shall exist, whether as a result of the final determination of a claim against Beatrice referred to in paragraph 3 hereof or otherwise, which in the opinion of Beatrice results in its suffering a loss, damage or expense to which it is entitled to be indemnified pursuant to Article IV of the Agreement (without regard to the \$30,000 limitation contained therein), then a notice in writing (a "Demand") of such event or condition shall be given by Beatrice to the Escrowee and the Indemnifying Stockholder (or the Representative) stating the amount claimed by Beatrice on account thereof. Any Demand may be withdrawn by Beatrice at any time by written notice to the Indemnifying Stockholder (or the Representative) and the Escrowee.

5. Satisfaction of Demands.

(a) Within 30 days after the giving of a Demand by Beatrice, the Indemnifying Stockholder (or the Representative)

shall, unless he has prior thereto either admitted or failed to deny the liability of the Indemnifying Stockholder therefor after notice as provided in paragraph 3(a) above, either admit or deny the liability of the Indemnifying Stockholder to Beatrice for the loss, damage or expense claimed in the Demand in a written notice to Beatrice and the Escrowee. If such notice is not given within such 30 day period, or if the Indemnifying Stockholder (or the Representative) shall previously have admitted or failed to deny liability after notice as provided in paragraph 3(a) hereof, the claim set forth in the Demand shall conclusively be deemed to be a liability of the Indemnifying Stockholder to Beatrice under the Agreement.

(b) In the event the Indemnifying Stockholder (or the Representative) shall deny liability as provided in paragraph 5(a) hereof, either Beatrice or either the Indemnifying Stockholder (or the Representative) may commence legal proceedings for the purpose of determining the validity and/or the amount of the claim set forth in the Demand or, if Beatrice and the Indemnifying Stockholder (or the Representative) shall agree in writing to submit the question of such determination to arbitration, either Beatrice or the Indemnifying Stockholder (or the Representative) may submit the question of the validity and/or the amount of such claim set forth in the Demand for determination by a qualified arbitrator or arbitrators on such terms as Beatrice and the Indemnifying Stockholder (or the Representative) may agree. To the extent not otherwise provided herein or by agreement of Beatrice and of the Indemnifying Stockholder (or the Representative), the rules of the American Arbitration Association as in effect at the time of any arbitration hereunder shall govern such arbitration.

(c) Upon final determination of a liability to Beatrice under the Agreement, either by admission on the part

of the Indemnifying Stockholder (or the Representative), by agreement of Beatrice and the Indemnifying Stockholder (or the Representative), or by entry of a final judgment or arbitration award as provided in paragraph 5(b) hereof, then Beatrice may give notice of such final determination to the Escrowee and the Indemnifying Stockholder (or the Representative). If the amount of such liability is not paid in cash by the Indemnifying Stockholder (or the Representative) to Beatrice within 15 days after the notice by Beatrice of the final determination thereof, the Escrowee shall, upon written request from Beatrice, pay to Beatrice out of the Collateral the amount of such liability. Such payment shall be made by transferring and delivering to Beatrice certificates representing such number of shares of Beatrice Common Stock then held by the Escrowee as part of the Collateral as shall have an aggregate Market Value (computed to the nearest whole share) calculated in accordance with paragraph 8 hereof as of the date of such transfer equal to the amount of such liability.

6. Termination Date.

Subject to the provisions of paragraph 7 hereof, the Escrow created by this Escrow Agreement shall terminate on the date (the "Termination Date") on which the last of the following events occurs (a) the expiration of the three-year statute of limitations (including any waivers thereof) imposed by Section 6501 of the Internal Revenue Code and the final determination and payment of any and all deficiencies which have theretofore been asserted by the Internal Revenue Service with respect to the federal income tax liabilities of the Company for its taxable years ended on or prior to the Closing Date (as defined in the Agreement), or (b) three years from the Closing Date, provided that in no event shall such date be later than five years from said Closing Date. The Escrowee shall be advised

of the Termination Date by joint written notice from Beatrice and the Indemnifying Stockholder (or the Representative).

7. Distribution of Collateral Following the Termination Date.

(a) If there is no pending Claim (as hereinafter defined) on the Termination Date the Escrowee as promptly as reasonably possible after the Termination Date, shall transfer and deliver the Collateral then held by it hereunder to the Indemnifying Stockholder. As used in this paragraph 7, the term "Claim" shall mean (i) any claim set forth in a Demand and (ii) any claim set forth in a notice to the Indemnifying Stockholder (or the Representative) pursuant to paragraph 3(a) hereof.

(b) If there is pending on the Termination Date any unsatisfied Claim or Claims, the Escrowee shall, unless otherwise directed as provided in paragraph 7(c) hereof, continue to hold under this Escrow Agreement for the benefit of the Indemnifying Stockholder and Beatrice, the Collateral then held by the Escrowee hereunder, until each such pending unsatisfied Claim has been satisfied, or withdrawn by Beatrice as provided in paragraph 4 hereof.

(c) If there is pending on the Termination Date any unsatisfied Claim or Claims, the Indemnifying Stockholder (or the Representative) may direct the Escrowee to transfer and deliver to the Indemnifying Stockholder, as promptly as reasonably possible after the receipt of such direction, all of the Collateral then held by the Escrowee hereunder except for such number of shares of Beatrice Common Stock as shall have an aggregate Market Value (computed to the nearest whole share) calculated as of the Termination Date as is equal to the aggregate dollar amount of all such then pending Claims.

(d) When all unsatisfied Claims pending on the Termination Date have been satisfied or withdrawn by Beatrice,

the Escrowee, as promptly as possible thereafter, shall transfer and deliver the Collateral then held by it hereunder to the Indemnifying Stockholder.

(e) Anything herein to the contrary notwithstanding, no fractional share of Beatrice Common Stock will be issued to the Indemnifying Stockholder in connection with any distribution provided for in this Escrow Agreement but the Escrowee shall transfer and deliver to the Indemnifying Stockholder the number of whole shares of Beatrice Common Stock nearest to the number of shares to which he is entitled in connection with such distribution as determined by the Escrowee.

8. Market Value.

The value of each share of Beatrice Common Stock to be used to calculate the aggregate Market Value referred to in this Agreement shall be the average of the composite closing prices of Beatrice Common Stock for the five trading days immediately preceding the date as of which such aggregate Market Value is to be calculated, as reported in the Midwest edition of The Wall Street Journal.

9. Representative.

The Indemnifying Stockholder may from time to time, by written notice to Beatrice and the Escrowee, designate a person or entity (the "Representative") to act for or in the place of the Indemnifying Stockholder hereunder and remove and/or replace any Representative theretofore so designated. The Representative shall have full authority to act for the Indemnifying Stockholder hereunder, except as expressly limited in such notice of designation. Beatrice and the Escrowee shall be entitled to rely on all actions of the Representative, subject only to any such limitation so expressed. If at any time more than one

person shall succeed to the interests of the Indemnifying Stockholder as beneficial owners of the shares of Beatrice Common Stock in Escrow hereunder, any action by or on behalf of the Indemnifying Stockholder hereunder, including, without limiting the foregoing generality, designation, removal or replacement of a Representative hereunder, may be effectively taken by the holder or holders of a majority in beneficial interests of the shares of Beatrice Common Stock in Escrow hereunder.

10. Interest in Collateral.

The interest of the Indemnifying Stockholder in the Collateral is non-assignable and shall be transferable only by will or by operation of law upon the death of the Indemnifying Stockholder. Upon the transfer of the Indemnifying Stockholder's interest in the Collateral (as permitted herein) the Escrowee may require such evidence of the transfer as it considers sufficient.

11. Miscellaneous Provisions Concerning the Escrowee.

(a) The Escrowee shall be entitled to reasonable compensation for all services rendered and expenses incurred by it in the performance of its obligations hereunder. The Escrowee shall be entitled to employ such legal counsel and other experts as it may deem necessary and proper to advise it in connection with its obligations hereunder, and may rely on the advice of such counsel, and may pay them reasonable compensation therefor. The Escrowee's and such legal counsel's and other experts' fees and expenses shall be paid by the Indemnifying Stockholder.

(b) The Escrowee shall not be liable for any diminution of value of the Collateral. The Escrowee shall have no authority to sell or otherwise dispose of or encumber the Collateral, except as provided herein.

(c) If the certificates for shares of Beatrice Common Stock held by the Escrowee hereunder are at any time transferred into the name of the Escrowee or its nominee, the Escrowee or its nominee, from time to time thereafter, shall (1) vote in person or by proxy the shares of Beatrice Common Stock held by it hereunder on matters submitted to a vote of the stockholders of Beatrice if, as and when requested to do so by the Indemnifying Stockholder (or the Representative) and (2) forward to the Indemnifying Stockholder (or the Representative) notices of any meetings of Beatrice, and any related proxy solicitation material, as promptly as practicable upon its receipt of the same.

(d) Notwithstanding any other provisions herein contained, the Escrowee may at all times act upon and in accordance with the joint written instructions of Beatrice and the Indemnifying Stockholder (or the Representative). The Escrowee shall not be liable for any act done or omitted by it in accordance with such instructions or the exercise in good faith of its own best judgment or pursuant to the advice of counsel, acted upon in good faith, of its selection, who may not be counsel to Beatrice or the Indemnifying Stockholder.

(e) The duties and responsibilities of the Escrowee shall be limited to those expressly set forth in this Escrow Agreement, and instructions given to the Escrowee pursuant to this Escrow Agreement, and the Escrowee shall not be subject to, nor obliged to recognize, any other agreement between, or direction or instruction of any or all of the parties hereto even through reference thereto may be made herein; provided, however, with the written consent of the Escrowee, this Escrow Agreement may be amended at any time or times by an instrument in writing signed by the Indemnifying Stockholder (or the Representative) and Beatrice.

(f) The Escrowee shall not be responsible for the sufficiency or accuracy of the form, execution, validity,

or genuineness of documents or securities now or hereafter deposited hereunder, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein, nor shall it be responsible or liable in any respect on account of the identity, authority, or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Escrow Agreement, and the Escrowee shall be fully protected in relying upon any written notice, demand, certificate or document which it in good faith believes to be genuine.

(g) The Escrowee is authorized, in its sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions as are herein provided for and orders or process of any court entered or issued with jurisdiction of the subject matter. If any property subject hereto is at any time attached, garnished or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any of such events the the Escrowee is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which the Escrowee is advised by legal counsel of its own choosing is binding upon it; and if the Escrowee complies with any such order, writ, judgment or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(h) The Escrowee may resign by giving 30 days advance written notice to Beatrice and the Indemnifying Stockholder

(or the Representative) and thereafter shall deliver the Collateral to such substitute escrowee as Beatrice and the Indemnifying Stockholder (or the Representative) shall jointly direct in writing. If such direction to deliver to a substitute escrowee is not received by the Escrowee within 30 days after mailing such notice of resignation, it is unconditionally and irrevocably authorized, directed and empowered to deliver all items held by it under this Escrow Agreement to any other bank or trust company in the City of Chicago with capital and surplus of at least \$5,000,000 which is selected by the Escrowee and which bank or trust company then shall hold the same as Escrowee subject to the provisions hereof.

12. Notices.

Notices, requests, demands, certificates, Demands and other communications hereunder shall be in writing and shall be deemed to have been duly mailed if they have been mailed by United States Registered Mail, Postage Prepaid, Return Receipt Requested and addressed as follows:

If to the Escrowee:

Continental Illinois National Bank
and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60693
Attention: Corporate Trust Division of
the Trust Department

If to Beatrice:

Office of the Corporate Secretary
Beatrice Foods Co.
120 South LaSalle Street
Chicago, Illinois 60603

With a copy to:

Winston & Strawn
Suite 5000
One First National Plaza
Chicago, Illinois 60670
Attention: Norman Waite, Jr.

If to the Indemnifying Stockholder or the Representative:

9 Huntington Road
Lynnfield, Massachusetts 01940

With a copy to:

Nutter, McClennen & Fish
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210

or shall be deemed to have been duly received if delivered in person to the Office of the Corporate Secretary on behalf of Beatrice, to the Corporate Trust Division of the Trust Department on behalf of the Escrowee and to the Indemnifying Stockholder (or the Representative) or to such other person or such other address as may be designated by written notice to Beatrice, the Indemnifying Stockholder (or the Representative) and the Escrowee. Each such communication (other than a Demand or notice of change of address) shall be deemed to have been given as of the date so mailed or delivered. Any Demand or notice of change of address shall not be deemed to have been made until actually received by the Escrowee. The Escrowee shall promptly give notice to the other signatories of the receipt by it of a Demand or notice of change of address.

13. Governing Law.

This Escrow Agreement shall be interpreted according to the laws of the State of Illinois and shall be binding upon and inure to the benefit of Beatrice and the Indemnifying Stockholder and the Representative and their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed on the day and year first stated above.

BEATRICE FOODS CO.

By _____

Its _____

ATTEST:

By _____

Its _____

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO

By _____

Its _____

ATTEST:

By _____

Its _____

JOHN J. RILEY, JR.

EXHIBIT C

Beatrice Foods Co.
120 South LaSalle Street
Chicago, Illinois 60603

Gentlemen:

This opinion is furnished to you pursuant to Section 11.9(d) of the Agreement and Plan of Reorganization made _____, 1978 (the "Reorganization Agreement") by and among John J. Riley Company, a Massachusetts corporation (the "Company"), Beatrice Foods Co., a Delaware corporation ("Beatrice") and the stockholders of the Company. Unless the context otherwise requires, terms herein are used as defined in the Reorganization Agreement.

We have acted as counsel for the Company in connection with the Reorganization Agreement and the transactions contemplated thereby.

In connection with this opinion, we have:

- (a) examined (i) copies of the Agreement of Association and Articles of Organization of the Company, as filed with the Secretary of State of Massachusetts, (ii) the By-laws of the Company as appearing in the corporate minute books furnished to us by the Company and certified to us by its Clerk as being in effect at the date of this opinion, and (iii) the corporate minutes and stock record books of the Company as certified by said Clerk as being accurate and complete at such date;
- (b) acquired certain certificates and other written advices of the Secretary of State and Commissioner of Corporations and Taxation of Massachusetts;
- (c) searched such indexes and places of records as we have deemed appropriate for the purposes of this Opinion;
- (d) made such inquiry of the officers and directors of the Company as we have deemed necessary or appropriate for the purposes of this opinion; and

(e) made such other legal and factual investigations as we have deemed necessary or appropriate for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

(1) The Company is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

(2) The Reorganization Agreement and Agreement of Merger, and the transactions contemplated therein, including, but not limited to, the merger of the Company with and into Beatrice on the Effective Date of the Merger, have been duly authorized, approved and adopted by the Company; the Reorganization Agreement and Agreement of Merger have been duly executed and delivered by the Company and (if duly executed and delivered by Beatrice) are binding upon and enforceable against the Company in accordance with their respective terms; the Company has full right and power to enter into the Reorganization Agreement and the Agreement of Merger and to perform its obligations thereunder.

(3) The Reorganization Agreement has been duly executed and delivered by, and (if duly executed and delivered by Beatrice) is binding upon and enforceable against, the Stockholders in accordance with its terms.

(4) The authorized capital of the Company consists solely of 100,000 shares of capital stock, par value \$.50 per share, of which 21,400 shares are validly issued and outstanding fully paid and non-assessable; there are no securities of the Company outstanding which would, if the Company did not merge with and into Beatrice, be convertible into shares of capital stock or other securities of the Company; and there are no subscriptions, options, warrants or other rights outstanding which would,

if the Company did not merge with and into Beatrice, entitle any person, firm, corporation or other entity to acquire from the Company any shares of capital stock or other securities of the Company.

Very truly yours,

NUTTER, MCCLENNEN & FISH

By _____
A Partner

EXHIBIT D

John J. Riley
228 Salem Street
Woburn, MA 01802

Gentlemen:

This opinion is furnished to you pursuant to Section 12.3(a) of the Agreement and Plan of Reorganization made _____, 1978 (the "Reorganization Agreement") by and among John J. Riley Company, a Massachusetts corporation (the "Company"), Beatrice Foods Co., a Delaware corporation ("Beatrice") and the stockholders of the Company. Unless the context otherwise requires, terms herein are used as defined in the Reorganization Agreement.

We have acted as counsel for Beatrice in connection with the Reorganization Agreement and the transactions contemplated thereby. We are familiar with Beatrice's Certificate of Incorporation and By-laws and the proceedings of the Board of Directors and Stockholders of Beatrice. In addition, we have examined such other documents and instruments and have made such inquiry of the officers of Beatrice and have made such other legal and factual investigations as we have deemed necessary or appropriate for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

- (1) Beatrice is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (2) The Reorganization Agreement and Agreement of Merger, and the transactions contemplated therein including, but not limited to, the merger of the Company with and into Beatrice on the Effective Date of the Merger and the issuance and delivery of the shares of Beatrice

Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger, have been duly authorized by Beatrice; the Reorganization Agreement and Agreement of Merger have been duly executed and delivered by Beatrice and, if duly executed and delivered by the Company and the Stockholders, are binding upon and enforceable against Beatrice in accordance with their respective terms; Beatrice has the full right and power to enter into this Reorganization Agreement and the Agreement of Merger and to perform its obligations thereunder.

(3) The shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger have been registered under the Securities Act, have been authorized for listing, upon official notice of issuance, on the New York Stock Exchange and the Midwest Stock Exchange, and when issued or delivered pursuant to Article III of the Agreement of Merger, will be duly and validly issued, fully paid and non-assessable.

(4) The shares of Beatrice Common Stock issuable or deliverable pursuant to Article III of the Agreement of Merger conform to the description thereof set forth in the Prospectus.

(5) The registration statements which contain the Prospectus are currently effective under the Securities Act. To the best of our knowledge, no stop order is presently in effect with respect to, nor have any proceedings been instituted, or threatened, to suspend the effectiveness of such registration statements.

(6) All consents, approvals and authorizations required under the state securities or blue sky laws of Massachusetts and New Hampshire for the issuance or delivery of the shares of Beatrice Common Stock issuable or

deliverable pursuant to Article III of the Agreement of
Merger have been obtained.

Very truly yours,

WINSTON & STRAWN

By _____
A Partner

3

3

3

AMENDMENT TO
AGREEMENT AND PLAN OF REORGANIZATION

THIS AMENDMENT ("Amendment") made this 28th day of December, 1978, by and among Beatrice Foods Co., a Delaware corporation (herein referred to as "Beatrice"), John J. Riley Company, a Massachusetts corporation (herein referred to as the "Company") and John J. Riley, Jr. ("Riley") to an Agreement and Plan of Reorganization ("Agreement") made August 24, 1978, by and among Beatrice, the Company, Riley and the other stockholders of the Company and providing for the merger ("Merger") of the Company with and into Beatrice.

WHEREAS, pursuant to Section 11.9(a) of the Agreement, the Company is contemporaneously herewith delivering to Beatrice an owner's title insurance policy ("Title Policy"), Title Policy Number 7851-01329 of Chicago Title Insurance Company insuring Beatrice's right, title and interest in and to certain parcels of real estate owned by the Company on and prior to the Closing (as that term is defined in the Agreement);

WHEREAS, certain of the warranties, representations, covenants and agreements contained in the Agreement and Disclosure Schedule relate to the Company's right, title and interest on and prior to the date hereof in and to those parcels covered by the Title Policy as aforesaid (such warranties, representations, covenants and agreements hereinafter being referred to as "Extended Warranties");

WHEREAS, the Agreement provides that the Extended Warranties terminate on the Warranty Termination Date (as that term is defined in the Agreement);

WHEREAS, pursuant to Article XV of the Agreement, Riley has agreed to indemnify and hold Beatrice harmless against any loss, damage or expense (including reasonable attorneys' fees) suffered by Beatrice as a result of inaccuracies or misrepresentations in, or breaches of, any warranties, representations, covenants or agreements made by the Company or any of its stockholders in the Agreement, the Disclosure Schedule (as defined in the Agreement) or in any certificate, document, instrument or affidavit delivered by the Company or any of its stockholders at the Closing;

WHEREAS, Beatrice desires to receive indemnification from Riley pursuant to Section 15.1 of Article XV of the Agreement for a period of up to five years following the Warranty Termination Date with respect to any loss, damage or expense (including reasonable attorneys' fees) it may suffer as a result of any inaccuracies or misrepresentations in, or breaches of, any of the Extended Warranties only to the extent to which Beatrice is precluded, by reason of the attribution to Beatrice, as corporate successor to the Company, of any personal knowledge of Riley imputed to the Company of unrecorded rights, titles and interest which are valid and enforceable against the Company, from obtaining any recovery from Chicago Title Insurance Company for any such loss, damage or expense in accordance with the exception to coverage of the Title Policy contained in paragraph 1 of Schedule B - Section 2 which appears under the heading: "The following matters affect either all or

portions of the premises described ^{on the description sheet} ~~in Schedule C~~ on page 3 of the Title Policy (hereinafter such exception from coverage is referred to as the "Coverage Exception");

WHEREAS, Riley is willing to provide such indemnification to Beatrice to such extent and for such additional period of time in order to induce Beatrice to consummate the Merger;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the parties hereto agree that:

1. All the Extended Warranties shall survive the Warranty Termination Date, but they shall terminate on the date of the first to occur of either the end of the five year period following the Warranty Termination Date or the death of Riley (such date being referred to herein as the "Extended Termination Date"); provided, however, that if there shall be then pending on the Extended Termination Date any demand, dispute, claim, proceeding or action involving a claim under the Agreement or this Amendment, each such Extended Warranty shall survive the Extended Termination Date insofar as it relates to such then pending demand, dispute, claim, proceeding or action until such demand, dispute, claim, proceeding or action is finally concluded and the obligations of Riley with respect thereto are fully satisfied.

2. In the event Beatrice is precluded, by reason of the attribution to Beatrice, as corporate successor to the Company, of any personal knowledge of Riley imputed to the Company of unrecorded rights, titles and interests in and to the real estate insured by the Title Policy in accordance with the Coverage Exception

of the Title Policy, from obtaining any recovery from Chicago Title Insurance Company for any loss, damage or expense (including reasonable attorneys' fees) occurring as result of any inaccuracies or misrepresentations in, or breaches of, any of the Extended Warranties, then Riley agrees to indemnify and hold Beatrice harmless against, and Beatrice shall be entitled to assert a right of indemnification pursuant to, and, except as herein amended, subject to the terms of, Section 15.1 of Article XV of the Agreement for, any loss, damage or expense (including reasonable attorneys' fees) suffered by Beatrice as a result of inaccuracies or misrepresentations in, or breaches of, any of the Extended Warranties until the Extended Termination Date, except that if there shall be then pending any dispute, claim, action or proceeding with respect to any of the Extended Warranties, written notice of which shall have been delivered to Riley on or before the Extended Termination Date, Beatrice shall continue to have the right to assert such claim and be indemnified with respect thereto after the Extended Termination Date.

3. Beatrice shall in no event be required to institute or commence any litigation or proceedings against Chicago Title Insurance Company, or any of its affiliates, which seeks to recover any loss, damage or expense of the type which Beatrice shall be entitled to be indemnified against hereunder in order to be entitled to assert against Riley any right of, or to receive from Riley any, indemnification hereunder; provided that in the event Beatrice receives any such indemnification from Riley, Riley shall be subrogated to any rights which Beatrice may have under the Title Policy to recover the amount of any such loss, damage or expense against Chicago Title Insurance Company (or such affiliates); and

Beatrice shall assign all such rights to Riley in writing, or otherwise provide Riley with suitable written evidence of such subrogation.

IN WITNESS WHEREOF, Beatrice, the Company and Riley have executed and delivered this Amendment on the day and the year first above written.

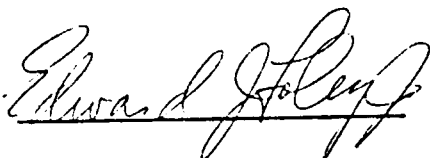
ATTEST:

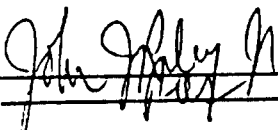
BEATRICE FOODS CO.,
a Delaware corporation

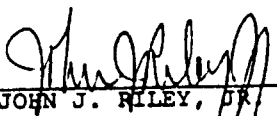
By 
Its VICE PRESIDENT

ATTEST:

JOHN J. RILEY COMPANY,
a Massachusetts corporation



By 
Its JOHN J. RILEY, JR.


JOHN J. RILEY, JR.

4

AGREEMENT TO CHANGE DATE OF CLOSING

Beatrice Foods Co. ("Beatrice"), John J. Riley Company ("Company") and John J. Riley agree to amend Article III of the Agreement and Plan of Reorganization made August 24, 1978 by and among Beatrice, the Company and the stockholders of the Company in order to provide for the Closing to occur on the date hereof.

BEATRICE FOODS CO.

Dated: December 28, 1978

By


Its VICE PRESIDENT

JOHN J. RILEY COMPANY

By

Its


JOHN J. RILEY


JOHN J. RILEY